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THE NEW REPUBLIC

March 18, 1967, 35 cents

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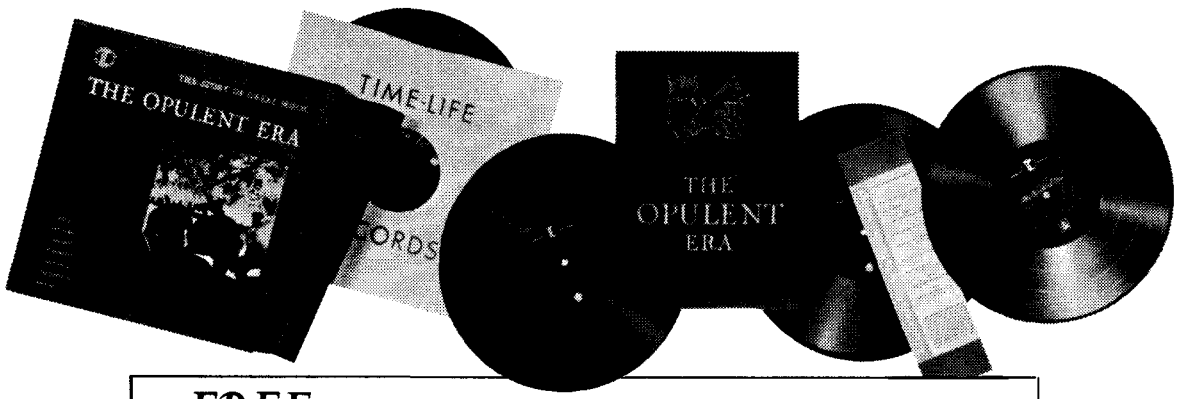

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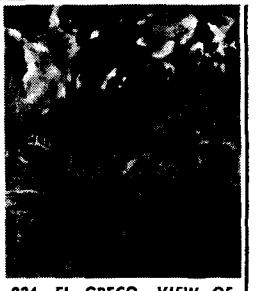

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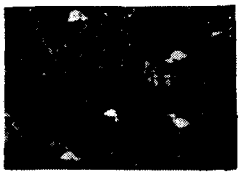

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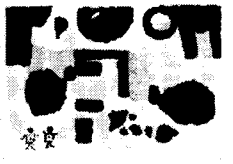

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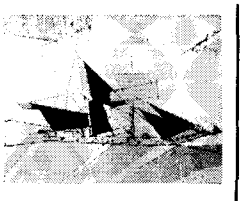

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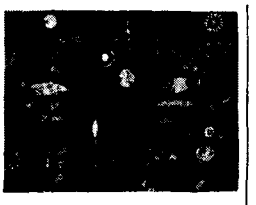

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Days of Innocence

★ Half a century ago these headlines blazed, triple bank, 8-columns, on the front page of *The New York Times*, March 16, 1917 (2 cents daily; 5 cents Sunday):

Revolution in Russia, Czar Abdicates Michael Made Regent, Empress in Hiding Pro-German Ministers Reported Slain

We looked up the old paper in the Library of Congress as the US Senate debated the consular treaty for better relations with Soviet Russia. Was a new cycle starting for the two superpowers?

What struck us the most in those headlines was the virginal innocence of America. There had been no advance warning in the *Times*, so far as we could find. News of several days of bread riots came only with the abdication. The US was as unprepared on world affairs as Africans are today. The world was at war and the US got its news – and propaganda – mostly from London. We would join England in World War I in a few weeks. Read these short panting announcements over a London dispatch: "London Hails Revolution/Expected Czar's Overthrow and Sees Brighter Prospects for the Allies/Think the Coup Decisive/Well-informed Observers Believe the Patriotic War Party Has Made Its Control Secure/Fear No Separate Peace/With Weak Rulers Deposed and Pro-German Advisers Ousted/They Predict New Victories."

And here were the bulletins over a Petrograd dispatch, dated March 15: "Army Joins with Duma/Three Days of Conflict Follow Food Riots in Capital/Populace Take Up Arms/But End Comes Suddenly When Troops Guarding Ministers Surrender/Czar Finds Capital Gone/Returns from Front after Receiving Warning from Duma and Gives Up His Throne."

It wasn't till that Sunday that a grim dispatch came from Berlin "(by Wireless to Tuckerton, N. J.)" headlined, "Berlin Sees New Revolt in Russia/Predicts Another Revolution When the People Will Demand Bread and Peace/Expects it in a Few Days."

It is hard to tear oneself away from the astonishment and gigantic interpretation of those days – "Overthrow of the government causes wild joy among the Jews of the East Side" – and the fact that on March 23 came the word "America first to recognize the new Russia."

Well. The world would never be the same again! The War, the Peace, the 1929 Crash, another War, the Bomb, Communism, McCarthy . . . they would all roll on. Fifty years ago this week the US broke out of its shell.

Misunderstandings with Russia and propaganda still go on, of course. Last week, when Mr. Johnson went to quite extraordinary lengths to try to blanket Bobby Kennedy's plea to end bombing of North Vietnam (two quickie press conferences, two speeches, a formal letter defending bombing and a headline-grabbing announcement that he had a letter from Kosygin agreeing to talk about a missile freeze) a bewildered telephone call came to a reporter here. It was from a Russian friend. Could he please tell, the voice asked, what all the excitement over the Kosygin note was about? It was just a routine reply so far as officials knew. Mr. Johnson may someday regret the oversale of this announcement in his duel with the senator.

Giveaways

★The big oil shale giveaway may eclipse someday even the giveaway of US airwaves to the TV-radio trust. A word deserves to be said about each. Public land in an area known as the Green River Formation of Colorado, Wyoming and Utah contains, according to the Consumers Information Committee on Resources and Energy, approximately two trillion barrels of oil. That's enough oil, Paul Douglas says, if sold by the government, to pay off the national debt. Now the Interior Department is considering its disposal and it will come before long to Congress. We can feel in our bones that the disposition of this shale, when the present oil wells are exhausted through overexploitation, encouraged by the 27.5-percent-depletion-allowance tax grab, will be the battle of the century.

As for the airwave giveaway, that surpassed even the railway plunder of a century ago when the Union Pacific got 20 million free acres of public lands in alternate sections along its tracks. All told Washington handed out 158 million acres, about the size of Texas. But in this ravishing of a continent at least the public got transport.

Put a Lid on

★ Now we have handed over the airwaves, which belong to you and me, to private exploiters who, at a minimum of plant investment, send us back advertisements on cigarettes and how to keep your dentures stuck in. A TV poll by Jack Boyle in the *Washington Star* finds 56 percent of TV viewers think programs are "terrible"; another 26 percent, almost as disgusted, call them "Not so hot." In a second poll 95 percent want somebody, almost anybody, to put a lid on commercials.

In a scandal of this sort, of course, the last people to find out about it are those in the agency assigned to police it, in this case the Federal Communications Commission. But now a row has broken out on the FCC: Commissioner Johnson accuses five fellow members of "total abdication" of responsibility in renewing licenses, and a seventh commissioner is almost as hot. The majority renewed the three-year licenses of a typical batch of 206 radio stations in Florida, Puerto Rico and the Virgin Islands, some of which planned to give their public no news or public service programs whatever.

★ *Note:* Local real estate man James Dixon ran an "Aditorial" addressed "To All Theologians," asking their help in changing "Give us this day our daily bread" to "Give us this day our strength to earn our daily bread"; seems the present form encourages "panhandlers" and those "suckled on the vine of government largesse," says Dixon, who can split a mean metaphor.

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"Progress" in Vietnam

Izvestia is wrong when it says Senate opposition to the war in Vietnam is "small," but Senator McGovern (see page 10) seems to agree with *Izvestia* that opposition in the Senate doesn't much influence the White House, which prefers to go by the Gallup poll showing 67 percent of the public supporting the continuing bombing of North Vietnam. This country can't lose in Vietnam, militarily speaking, the way the French did. A lot of people seem to think this means the US is bound to win, especially as China, a major supplier of military aid to North Vietnam, is in turmoil. But the war is being fought in the South not the North. Defense Secretary McNamara admits that the bombing of the North is almost a separate issue. It hurts the North, he says, yet doesn't much impede a flow of fighting men and military supplies into the South. Its value is supposed to lie in cheering up our boys, and General Ky. However, this country has far outpaced the North in sending soldiers and arms into South Vietnam and so the Viet Cong can no longer hope to win many battles there. But that is by no means the same as saying the Viet Cong are about to be uprooted and annihilated.

Conceivably they could be won over. There is precious little evidence of the South Vietnamese military junta in Saigon trying to do that. They drag their heels on a simple amnesty measure, aimed at bringing over high-ranking Viet Cong officers, that was agreed on at the Manila conference last October. The US Ambassador to the United Nations, Arthur J. Goldberg, complained about it when he visited Saigon this month. Yet Goldberg reports that he is encouraged by the social, economic and political progress he says is being made in South Vietnam. That is a horridly familiar ditty on the lips of high American officials who pay fleeting visits to Saigon. Even hard-headed McNamara was euphoric enough to whistle it once. It never has been a popular refrain with American soldiers, bureaucrats or reporters who stay in South Vietnam long enough to get wise to what goes on there. *The Washington Star* is a paper which would hate to be accused of harboring doubts about Mr. Johnson's war but which prefers even the most unpleasant facts to airy fiction. Richard Critchfield reported in the *Star*, on March 5, that "after 13 years of American sponsorship, virtually every major social problem in South Vietnam remains unsolved. And, until they are solved, there can be no hope for a non-communist South." Why so? Because, explains Critchfield, "the main burden of advice from an increasingly frustrated group of counter-

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insurgency authorities has for years been that the military effort would remain *bloody and fruitless* [our italics] unless a natural non-communist political base could be nurtured in South Vietnam." Without such a base, Critchfield went on to emphasize, "the political struggle against organized communism is doomed and Ho Chi Minh some day wins, *even if China is consumed by civil war and North Vietnam is bombed off the face of the earth.*" Militarily, the Viet Cong guerrillas may not be a match for the American troops and their Korean, South Vietnamese and other fighting allies in South Vietnam. But, according to Critchfield, their "political organization is believed stronger than ever, and the establishment of rule of law and an economically and politically viable non-communist South Vietnam is nowhere in sight." According to US Ambassador Henry Cabot Lodge, the Viet Cong's greatest appeal is its promise of land to the peasants. Last year in Honolulu, President Johnson put full American support behind South Vietnam's supposed counter to the Viet Cong – "social revolution including land reform." But when in December a leading civilian member of the brand-new constituent assembly in Saigon proposed that the assembly guarantee to every Vietnamese peasant the right to own the land he tills – which would at last put South Vietnam in line with the land reform programs of Japan and Taiwan – the plan got only three votes out of 117; the majority of assemblymen objected that it sounded "too much like communism."

In the Mekong Delta, half the peasants don't own any land and 80 percent own tiny, tenth-of-an-acre rice paddies and have to rent another half acre or more in order to live. As tenants, they hand over between 30 and 50 percent of their crop to landlords for rent, but have no security of tenure. Critchfield suggests such conditions explain why "pacification" has failed and why "several battalions of American Marines have never been able to win over" even six "tiny Vietnamese hamlets within a stone's throw of Da Nang air base." Now prices have skyrocketed again in spite of last summer's devaluation of the South Vietnamese piastre and nearly a million tons of rice will have to be supplied this year by the United States; soldiers, civil servants and teachers "must borrow, beg or steal to feed their families" and "Saigon's great slums have become smouldering cauldrons." It's certainly hard to figure where Goldberg derives his "encouragement" about the South's "progress." Maybe we're bombing the North to ensure the people up there are miserable too?

The North isn't just being bombed, now it's being shelled as well by long-range artillery and by the Seventh Fleet, and its rivers are being mined by US Navy planes. To what end? The President and members of his Administration keep repeating that the aim is not to destroy North Vietnam or even overturn its government, but just persuade them to come to a conference table and there accept a peace that will assure the South Vietnamese the right to decide their own future. Can Hanoi be bombed into peace talks? Senator Fulbright suggested some time ago that this country "terminate" its bombing of the North as part of a peace package to include Saigon and the Viet Cong's National Liberation Front, as well as Washington and Hanoi, in negotiations. Senator Percy more recently proposed ending the bombing once negotiations start; he too said the Viet Cong must be a party to the negotiations because, "like it or not, the fact remains that the Viet Cong control large regions" of South Vietnam. On March 2, Senator Robert Kennedy proposed ending the bombing and bombardment, to test the sincerity of Soviet Premier Kosygin and others who asserted that if bombing stopped talks would begin. Mr. Johnson, Secretary Rusk and Ambassador Goldberg shot the Kennedy plan down faster than anyone could blink, causing Arthur Schlesinger to charge that despite official talk of the door to peace always being open, the government intends to keep up the bombing to give this country an even more favorable negotiating position. That tactic is costing us 170 Americans killed weekly in Vietnam; the toll is now about 8,000 dead, 45,000 wounded. At his March 9 press conference President Johnson said everyone wants peace but on different terms. *That's* the hang-up. The Viet Cong refuse to fade away, which is what Washington and Saigon would like. They are probably capable of fighting on for years more. The real issue is if it's worth many more American lives to deny those people a political stake in their own land.

Betty Furness

The presidential appointment of Betty Furness to succeed Esther Peterson as Consumer Adviser in the White House ends long speculation as to the future of the resolve announced by Mr. Johnson three years ago: "What is also new is active representation of the consumers . . . at the topmost levels of government."

Now loud and clear, the President has signaled that representation within the government of the consumer as an economic force comparable to business and labor is out. Behind the scenes, it had been out for months. When the terms of the Consumers Advisory Council expired last June, the President did not see fit to make new appointments, and the outgoing council's account of its work was held in the White House, unreleased, for six months. No annual report of the adviser was issued during the three years of Mrs. Peterson's tenure. On Capitol Hill, Administration support of the 1966 pro-consumer "truth in packaging" bill was too tenu-

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ous to prevent major amendments as business lobbied its case for things as they are.

Mrs. Peterson made buyers across the country conscious of their rights and privileges – including the right to complain. She likewise negotiated the creation of a number of voluntary industry committees – from textiles to groceries – to review complaints and improve practices. But she also raised some hackles, particularly on the necks of the advertising fraternity.

The new appointee will be less troublesome. Ever since she left Hollywood and the stage, Miss Furness has made her name in advertising – it was her opening of Westinghouse refrigerator doors at the commercial breaks in the broadcasting of Democratic National Conventions that put her in touch with politics.

The President wants no needler, perhaps not even a tickler of business on behalf of consumers; the new adviser will serve as a public relations officer, interpreting the Administration's programs affecting consumers' interests, rather than bringing their problems to the "topmost levels of government." The opener of refrigerator doors may not know it, but like her predecessor, she has been put in charge of a deep-freeze.

The Government's New Policy

Curbing the Drug Traffic in Britain

London

Scarcely a day goes by without public mention of drugs. Hard facts are difficult to come by. In 1958 there were 62 registered heroin and cocaine addicts throughout the country; today the figure is nudging a thousand. Registration under the British system entitles the addict to a supply of drugs and equipment from a general practitioner, but not all addicts register. The true number of addicts is probably nearer 2,000. By American standards this is a modest total, but the trend is upward, and New York's Vera Institute of Justice which looked into the situation in Britain put the likely figure in 1972 at over 10,000.

So far this growing market has not greatly attracted the international traffickers. Enough heroin and cocaine apparently spills over from the authorized prescriptions to keep most of the nonregistered addicts in business, and the black-market price has consequently been running at only $3 a grain, well below what other markets can bear. But the government now plans to change the prescription system, and make hard drugs available only through hospitals and hospital doctors. This, they argue, will cut down on the overspill and slow up the increase in addiction.

Critics, who include many of the general practitioners, say the new system will simply encourage illegal traffic, push up the black-market price, make the addict and would-be addict dependent on the peddler, and so greatly increase hidden addiction. On medical grounds they claim too that the doctor-junkie relationship which offers hope of cure for some will be destroyed, and that hospitals will be too impersonal and too preoccupied with other cases to establish any real rapport.

All these dangers would seem to be quite real. The price of black-market heroin is already edging up as general practitioners cut back prescriptions in anticipation of the new rules. There is a growing fear that the main drug route from France and Italy to North America will be deflected to Britain; some Italian consignments have already been picked up at the ports. The hospitals show no great enthusiasm for the new responsibilities soon to be thrust upon them. But in face of the mounting public interest the government is not likely to be turned from curbing addiction by curbing state supply. While the press ferrets away for fresh evidence of danger – some of which, like the story of girl addicts at a Surrey grammar school whose headmistress was too ashamed even to acknowledge their existence makes excellent copy – the government must be being seen to govern.

The tightening-up is being extended to marijuana, amphetamines and LSD. Under the law, heroin, cocaine and marijuana carry stiff penalties, users of amphetamines and LSD are less culpable. The logic of this division is itself peculiar. By any reckoning amphetamines constitute a greater danger than marijuana and LSD. They are more easily available – there is a steady market fed by overprescription, theft, and illegal imports – and, if not necessarily addictive, they are clearly dangerous when taken by the fistfuls some youngsters favor. But in Britain, as in most of the West, marijuana is the bogey, and pays the penalty for it. Its distinctive smell makes it an easy target for the drug squads.

Most informed opinion will allow that marijuana is nonaddictive. The case commonly made against it is that it "leads on" to mainline drugs, although statistically this can only be true in the weak sense that many heroin addicts will have experienced marijuana at some time. There is no data to show in Britain, any more than in the United States, that marijuana is a stepping-stone to heroin. The real objection to marijuana is the Puritan one, that in the words of the magistrate it "undermines the morals and morale of people in Britain." For "people" read "the young." This blunt reaction is carried over to the newcomer, LSD.

In popular mythology, LSD is what makes young

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people jump out of windows. So, they say, does Batman. LSD is now banned and official supplies severely restricted, so that some psychiatrists have had to stop treatment; Batman is prefaced on television by a warning. It might be better if the position were reversed. No repressive action of itself is likely to stem the spread of LSD. It is being illegally imported and illegally made. Unconfirmed reports say that the laboratories at Cambridge University are especially active. Current pop-songs plainly stem from LSD trips, and musically, at least, are none the worse for it. Mother may not care to recognize this, but the children do, and will be tempted to take a trip if only because it is fashionable. Exaggerated statements about the dangers merely convince them that the real concern is with their morals. So too does the frequency with which the drug squads have taken to pouncing on the homes and hideouts of the pop-singers themselves, a reflex that recalls the 1950's habit of nabbing celebrated actors to show police efficiency in combating homosexuality.

The reasoned warning on LSD goes by default, and those who might be heeded are not always allowed to speak. A television program featuring Dr. Ronald Laing, author of *Divided Self*, recently ran into trouble. Laing stressed that taking LSD requires as much inner preparation and sense of responsibility as "a decision to climb the Matterhorn." So far so good. He went on: "But I would not stop people climbing the Matterhorn even though some people fall off it." Not so good; television authorities stepped in, the company refused to cut the line, the program was shelved.

Official rules put all drug-takers into the same illegal boat. It might be too much to expect the government to turn a blind eye to marijuana, keep just a watching brief on LSD, and concentrate on the amphetamine-takers and in particular the mainline junkies, but it would be something if there were open recognition that there are at least four separate phenomena whose impact ranges from the socially unconventional to the medically dangerous. Such recognition might help to scatter the herd and knock away some of the rungs in the ladder of drug escalation which an indiscriminate repressive policy can only assist in creating.

BRIAN WENHAM

"Why Don't You Speak Out, Senator?"

"Dear Senator McGovern:
I appreciate the things you are doing in the Senate, but why so quiet on Vietnam? Why don't you senators have the guts to speak out against this terrible war instead of leaving it to the college kids?"

Letters of this kind have come not only to me but to most of my colleagues in the last two or three years. As one who believes that our deepening military involvement in Southeast Asia represents the most regrettable diplomatic, political and moral failure in our national history, I react to such queries with some feeling – perhaps some measure of guilt, and a deep sense of frustration over the failure of Senate dissent, including my own, to influence our course in Vietnam.

The truth is that there has been an unprecedented volume of thoughtful criticism by senators, in floor speeches and committee hearings, on public platforms, over radio and television, in mass circulation articles, countless news releases, and in confidential discussion with the President and high Administration officials. While the major part of this effort has rested on a dozen senators, nearly a third of the Senate has raised searching questions.

Senator Wayne Morse of Oregon, for example, one of the most articulate orators ever to serve in Congress, has for three years literally bombarded our policy-makers from the Senate floor and from platforms across the nation. Senator Ernest Gruening, a tough-minded old warrior of wisdom and conviction, has waged a relentless campaign to reverse the Administration's course in Vietnam.

Senator J. William Fulbright, with intelligence and sophistication, has conducted hearings in depth to which he has brought the country's most respected authorities – much of this on nationwide TV and all of it widely reported in the press. Mr. Fulbright has placed the full force of his reputation and a prestigious committee chairmanship behind public hearings, Senate floor statements, and a stream of articles, books, lectures and television interviews. His case against our policy in Vietnam has not been accepted by the Administration, though it seems to me to be so thoroughly convincing as to be irresistible.

In the fall of 1965 Senate Majority Leader Mansfield and Vermont's respected Senator George Aiken, the senior Republican in the Senate, and several other highly regarded Senate moderates conducted a thorough study tour of Southeast Asia. That effort led to the sobering "Mansfield Report" signed by every senator in the group. This report, published in full or in considerable part in the nation's press, clearly spelled out the folly of what was then becoming an "open-ended" war in Vietnam. It was all but ignored.

Nearly a year prior to the Mansfield report, other senators, including Church of Idaho, Clark of Pennsylvania, Bartlett of Alaska, Gore of Tennessee, and Nel-

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son of Wisconsin, had raised pointed questions about our Vietnam policy. I believe it was this Senate floor discussion early in 1965 which finally prompted the President to make his April 7, 1965, offer at Baltimore for unconditional discussions with Hanoi. On the afternoon of the Baltimore address, the President called Senator Church and me to his office at the White House to examine an advance copy of his text and to tell us in effect that we were "getting our way" on the negotiation offer. Actually, the speech struck a shrewd balance between hawks and doves and was accompanied by an escalation of the war. It did, however, represent a partial response to Senate dissent, though I have come to think it was primarily calculated to disarm the dissenters at home and abroad without changing policy.

The 37-day bombing pause of late 1965 and early 1966 was also partially an outgrowth of Senate pressure. Sixteen senators, including Hartke of Indiana and McCarthy of Minnesota, signed a letter urging an extension of the bombing pause. These senators have individually and in groups subsequently taken issue with the official line.

To grasp both the frustration of dissenting senators and their limited impact on Administration policy, it is necessary to consider the experience of Senator Robert Kennedy. Because of the prestige of his name, the size of his state, and his possible presidential interests, any statement by the junior senator from New York is assured of much closer press coverage and attention by the Administration than the average senator could expect.

On Thursday morning, March 2, Senator Kennedy called to advise me that he expected to take the Senate floor that afternoon at 3 p.m. to discuss American policy in Vietnam. He and his advisers had been at work for weeks on a major Vietnam proposal and had been calling other senators and members of the press to alert them.

That afternoon, when Kennedy took the floor, the press gallery was jammed and a considerable number of senators were in their seats with advance copies of the speech which called for a cessation of the bombing of North Vietnam accompanied by an invitation to Hanoi to begin peace negotiations within a week.

As the senator was preparing to speak, the Administration launched a series of strenuous moves to "kill" the speech. The White House quickly called an impromptu news conference to announce that Russia had agreed to a proposal made weeks before to discuss methods of limiting the arms race. The President also reiterated his determination to continue the bombing. In a rather remarkable contrast to the days when we used to regard the war as primarily a Vietnamese conflict with our forces there simply to assist Saigon, he added: "I think the American people should know that this is a question between their President, their country, their troops, and Mr. Ho Chi Minh and the troops that he is sending in from the North. Everyone can take whatever side of the matter he wants." As *The Washington Post* observed the following day, the President was reacting as though the war were "no more than a personal vendetta between Lyndon Johnson and Ho Chi Minh." No matter the views or interests of our ally in Saigon or our principal enemy, the Viet Cong in the South, or of the United States – please keep out of this private affair between the White House and Ho Chi Minh!

Kennedy's suggestions for negotiation tied to a bombing pause were further blanketed by a letter which the President had previously arranged for release through Senator Henry Jackson. Simultaneously, Kennedy's proposal was being blasted by Secretary of State Rusk and General Westmoreland – Rusk saying that we had already tried this approach and Westmoreland saying it was too dangerous to try.

The treatment given Kennedy recalled the President's sudden rush to Honolulu a year ago when Senator Fulbright's hearings were capturing mass television audiences and large news headlines.

Those of us who have observed the inability of such prestigious senators as Mansfield, Fulbright and Kennedy to influence significantly our policy can be at least partially forgiven if we conclude that our own less publicized efforts are of limited value.

It should be noted that the Senate critics have experimented with a variety of approaches "to reach the President's ear." Most of the dissenters have accompanied their criticism with positive alternatives to our present course. Their initiatives have been backed by many of the nation's most vocal citizens and private groups. Seldom in our history have so many enlightened and morally sensitive political, religious and educational leaders joined in opposing a wartime policy of our government.

Their principal satisfaction to date, however, has been the nervous, unprovable assumption that we would be involved in an even larger war had it not been for the critics both in and out of the Senate. There may be the further hope that while dissent is not likely to halt a war, it serves to point up the painful lessons that we must learn if we are to avoid another such ill-advised venture in the future.

To the man who writes "Why don't you speak out, Senator?" my answer is, "We have, and we can only pray that it has served some useful purpose."

George McGovern

Mr. McGovern *is the Democratic junior senator from South Dakota.*

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Testifying for Dodd

"Closed lips hurt no one, speaking may," said Cato, the Censor. Until two weeks ago, this had been the theory of Senator Thomas J. Dodd (D, Conn.) in the face of attacks on, and an investigation of, his financial and political practices. On the eve of his second encounter with the Senate Ethics Committee, however, the public vow of silence was broken. "I've had a bad press," said the senator. "Maybe I should have spoken out earlier about this bucket of garbage, but I didn't want to be answering every little jab. For a whole year I've held back. It has been worse than a hair shirt – it's been a thorn shirt. I've been lampooned, cartooned, and harpooned."

It had been a portentous week for Mr. Dodd. On the day I saw him, March 2, he had been "surprised" to learn that the Ethics Committee (officially, the Select Committee on Standards and Conduct) would open public hearings on his financial affairs March 13. He had been given this date a month earlier, but the failure of his lawyers to obtain hoped-for delays and suppression upset him.

The week had begun with stories out of Connecticut, which he confirmed, that his lawyers were circulating affidavits to hundreds of people who attended "Dodd dinners" between 1961 and 1965. A signer of the affidavit had to swear before a notary public that he bought dinner tickets "as a personal gift to Senator Dodd," and that he had been "motivated by my admiration and respect for him. They were not intended as a political contribution." In other words, all that money came from what the senator, in the different context of a Christmas letter to his constituents in 1964, called "the contagious spirit of selfless generosity. . . ." This phrasing of affidavits is an effort to rebut the most serious charge against Dodd – a double-headed one – that he pocketed for personal use, and paid no income tax on, some $340,000 that had been raised ostensibly for his 1964 campaign and to pay off earlier campaign debts. If Dodd is to stay in the Senate and out of jail, he must sell that story to both the Ethics Committee and the Internal Revenue Service. He must also satisfy the Justice Department on another charge, which is that he accepted gifts, gratuities and cash in return for favors performed by him in the Senate.

The second day of that week brought an explanation, to those who needed it, of the fact that Dodd's most ardent defenders have included William F. Buckley Jr., John Chamberlain, and both the late and the living Fulton Lewises. The occasion was the Senate Foreign Relations Committee vote on the US-Soviet Consular Treaty. Fifteen senators, including doubting Bourke B. Hickenlooper of Iowa, voted for the treaty. Dodd joined Frank J. Lausche (D, Ohio), John J. Williams (R, Del.) and Carl E. Mundt (R, S.D.) to vote nay. Dodd's links with rightist groups are legion, his income from services to them substantial, his biggest individual campaign contributors are ultra-conservative, and his statements on foreign policy have been in accord with these supporters and in conflict with that of the Kennedy and Johnson Administrations, on Laos, Congo, Vietnam, Cuba, China and Berlin. Dodd's view is that he is a liberal who gets tabbed as a rightist only because of his sturdy anti-communism.

But it was the third day, March 1, that produced the events that could affect the outcome of the Ethics Committee's probe more than anything else, though this had nothing to do with ethics, the Senate or Dodd. It was Adam Clayton Powell's hanging party in the House. When the trapdoor was opened under Powell, Dodd felt the draft. Everyone with whom I talked agreed that stringing Dodd up, too, would be the best way of convincing Negroes that capital punishment was being meted out regardless of race, creed or color. One cynic said that if the Senate Ethics Committee had been charged with the Powell case, and had taken as long as they have taken to explore Dodd's affairs (more than a year), there would have been hell to pay, but the hope is that Negroes won't think that.

Dodd does not believe his financial dealings are uncommon. "If you have done nothing unusual," I asked, "then what are we to make of your fellow senators? The men in this body must be hypocrites if they do the same things and yet don't come to your defense when you are pilloried."

Senator Dodd did not like this dichotomy: "No, you can't say they are hypocrites. They just don't know enough about the case. If they did, they would be disturbed."

Dodd's lawyers will have to get a 100-percent response in their signature campaign to convince the Ethics Committee that everyone involved in the testimonial meals knew they were shelling out for Dodd personally and not for any legitimate political purpose. That may prove difficult. They can't expect to get the signature of President Johnson, who attended two of these affairs as Vice President and said he had no idea they were "to obtain funds for personal use." (An Associated Press story about a $100-a-plate breakfast in Hartford on October 26, 1963, said, "The Vice President and his wife are in Connecticut today to help boost Dodd's campaign funds for reelection to his Senate seat in 1964.") Vice President Humphrey, who

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also spoke at a Dodd dinner in March 1965, said he, too, thought the money was to pay campaign debts. John Bailey, chairman of both the national and Connecticut Democrat parties added that he didn't think such affairs had ever been used in Connecticut to replenish a politician's private stock.

Dodd admits that these expensive repasts were "clearly not for a campaign, since they weren't held in a campaign year." He "assumed" that Johnson and Humphrey knew what the money was for, and everyone else did, although he insists he didn't know much about details of arrangements, since they were made by various committees in Connecticut.

James P. Boyd, the senator's aide for 12 years, his administrative assistant and chief speech writer for six years and the man whose defection triggered the investigation, disputes every part of Dodd's explanation. "In the first place," Boyd says, "Dodd always supervised the entire procedure when these affairs were being planned, right down to the mailing of letters and tickets. That's one reason he's such a successful politician. Next, when LBJ's advance man, Ivan Sinclair, called me to talk about the financial purpose of the 1963 dinner, Dodd pretended to be injured, and said, 'Tell him that it's for the campaign, of course. Why are they questioning it?' I replied that a Vice President has to be careful. Finally, Vice President Humphrey had agreed to speak at the 1965 dinner, but then it turned out that John Bailey wanted him for the Jefferson-Jackson Day dinner at about the same time, and a small battle broke out over which banquet he would honor. He chose the Dodd dinner, but of course it is inconceivable that he would have chosen wittingly to raise private funds for Dodd over funds for the party."

Reviewing the list of possible witnesses, it appears that the Ethics Committee does not intend to examine charges that Dodd subverted the work of Senate committees by trading favors with people he was supposed to be investigating. It is hard to know how much substance there is to the allegations of Drew Pearson that Dodd swapped favors with the insurance companies when he headed a probe for the Anti-Monopoly subcommittee, but a strong case can be made that Dodd played ball with NBC and the Metromedia group as chairman of the subcommittee to investigate juvenile delinquency. It may be both improper and politically impossible to explore such a briar patch, which gets into thorny questions of a chairman's prerogatives and prickly areas of influence-making, but we must all regret the decision, if that's what it is. Here would be a rare opportunity for the nation to learn how power in Washington is used, for whom and at what price.

Mr. Boyd relates that before the Dodd story broke, one investigator expressed dismay at the prospect of taking on "another politician who's Irish, Catholic and loudly anti-communist. Joe McCarthy was condemned for financial irregularities, and J. Parnell Feeney Jr., (who changed his name to J. Parnell Thomas) was sent to jail for taking office kickbacks. If we take on Dodd, it's just going to be another big mess, and everyone involved will be called anti-Catholic, and pro-Communist." However, Mr. Boyd, Senator Dodd's assistant for all those years, an Irish Catholic and an anti-communist, is not very worried.

Robert Yoakum

Antitrust Doldrums

by James Ridgeway

In Johnson's Washington, the big corporations are viewed as partners in government, so much so that it sometimes looks as if social policy will be framed and administered within the large companies, rather than in the government. One result of this tendency is to reduce the antitrust laws to irrelevance. There is certainly little enthusiasm for stopping the growth of large companies, but more important, there is not even much interest in guiding the development of new industries that are forming in communications, education, city building, research and so on – the industries which are likely to have a deep influence on life in this country for the next 50 years.

While this mood has put the Justice Department's antitrust division and the Federal Trade Commission into the doldrums, the real disappointment has been the Congress and, in particular, the Senate Antitrust and Monopoly subcommittee. This subcommittee has a conservative cast, though it still is run by a liberal, Senator Philip Hart of Michigan, who has charge of a staff of talented people. There has always been hope that this subcommittee could come to grips with the

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problems of economic concentration and fashion the controls which would offer some protection for the public against the huge corporations. In discussing the problem before the American Bar Association last spring, Hart himself said, "The United States is riding the crest of the greatest merger tide in our history with no end in sight. Many of our large firms are being consolidated into conglomerate enterprises. Overall concentration continues to increase and companies once dominant in one industry are reaching into others. The chief economist of the Federal Trade Commission estimates that by 1975, 200 corporations will hold 75 percent of all manufacturing assets. Yet, in spite of these developments, antitrust enforcement is being carried on in a low key; major mergers are consummated without apparent challenge; predatory practices often receive little attention; identical pricing patterns in concentrated industries seem to be regarded with little concern.

"Certainly it would be paradoxical," he continued, "if the nation which has demonstrated to the world through its own prosperity and economic growth the flowering benefits of competition should now turn its back on the same policy. There are many who would repudiate competition for its own success and retire antitrust – the essential partner and guarantor of competition – to a position as chairman emeritus of the board with only perfunctory duties."

This was spirited talk, but unfortunately it doesn't reflect the realities which have depressed the influence of Hart's subcommittee over the past few years.

Its Production in a Decade

The antitrust and monopoly subcommittee is one of the largest in Congress. Its annual budget is over half a million dollars, about a quarter of the total going to the Republican minority. In the past decade, the subcommittee has produced only two major pieces of legislation, and neither had much to do with increasing competition in the economy. The most important was the 1962 Kefauver drug amendments which required manufacturers to demonstrate the safety and efficacy of medicines. The other was Hart's truth in packaging bill which sets standards for size and content. The subcommittee did the groundwork on this bill, and then because of the unfavorable political atmosphere it was shifted over to the Commerce Committee and, in a watered-down version, finally passed by Congress last year.

Hart became chairman when Kefauver died in 1963, but James Eastland, chairman of the parent Judiciary Committee, had stacked the antitrust subcommittee with conservatives of both parties to keep it in hand. Republicans Dirksen, Hruska and Fong usually side with Democrats McClellan, Edward Long and Ervin against Hart, Dodd and Edward Kennedy. In effect, Hart is a minority chairman, and even his two allies are thin reeds on which to lean. Dodd is up to his ears with the insurance companies; and Kennedy is not prone to sticking his neck out. Because the subcommittee is so lopsided against him, it would be a waste of time for Hart to issue a subpoena to a balking businessman; the parent committee would never back the subpoena. While he does control the staff and can pretty much schedule hearings, Hart can't issue staff reports without subcommittee approval, which means he can't issue them at all. And it is nearly impossible to get the group to agree on any kind of committee report. For instance, after holding hearings on pricing practices in the undertaking business, the subcommittee could not agree on what to do next. Finally Hart got them to agree to a report in three parts, neither of which relates to another. There is a mild statement attacking the funeral directors signed by Hart, Dodd and Kennedy, followed by a defense of the industry by Dirksen and Hruska. Finally Ervin, Long and Fong wrote individual opinions, basically defending undertakers.

This leaves Hart and the committee staff pretty much to themselves. By nature Hart is quiet and serious, rather more given to the long scholarly hearings on economic concentration that his staff undertook last year than to raising cane with big business in the old Kefauver manner. He is, however, interested in consumer problems. For example, Hart recently took on doctors who deal in drugs and eyeglasses they prescribe to patients.

Partly because of the subcommittee's conservative cast, Hart has shied away from specific antitrust issues and either has taken the staff off on academic studies of economic concentration or gone after consumer problems. Hart still has the freedom to hold hearings on crucial antitrust matters, if he so desired. In addition he could always use the staff reports in speeches which could be made on the Senate floor. But his associates say this is not Hart's style. Perhaps in reality Hart has little interest in changing the economic structure. Antitrust may seem academic to him.

Whatever the reasons, the most interesting aspects of Hart's involvement with the subcommittee are the issues he has let slide. A few examples follow.

Hart has refused to intervene in the ITT-ABC merger case – the biggest proposed merger in communications industry history and perhaps the prelude to a series of mergers in international communications. ITT is deeply involved with politics abroad, and there is good reason to question the effects those ties could have on ABC's independent news sense. The Federal Communications Commission was willing to let the merger go through without any hearing at all, but then in defer-

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ence to one member, two days of testimony was taken before the combine was authorized. The Justice Department now demands the commission reopen the case to explore anti-competitive possibilities, and the commission will probably oblige. In which case, there is likely to be another round of hearings, this time slightly more elaborate, before the approval is given. Faced with this situation, the best Hart could do was to send along a weak letter to the commission asking that it hold hearings. Hart himself might have held them. Failing this, he could have developed the issues and testified before the commission as a public defender. No one yet has put the public interest case forcibly. But then, according to Hart's associates, this is not the senator's style. He doesn't like to second-guess administrative agencies.

American Motors seems to be in death throes, which means that the car business will be left in the hands of three companies. Should American Motors be saved? Is the time finally at hand for the government to sue to break up General Motors and thereby create some competition in the automotive business? Should it be concentrated in three giant firms, one of which – General Motors – is dominant?

These questions may be of no relevance to the majority of the antitrust subcommittee, but why are they of no apparent interest to Hart?

Producers of different sorts of fuels are merging. An indication of the trend occurred last year when Continental Oil Co., the eighth largest oil producer, announced it was merging with Consolidation Coal Co., the second biggest coal firm. Natural gas and coal compete with one another in the manufacture of electricity. Continental Oil sells natural gas to West Coast markets, while Consolidation Coal historically has operated in the East. But sometime before the merger, Consolidation had acquired major coal holdings in the mountain states, which put it in the Western market. With its acquisition, Continental has a hand in determining the market for both coal and natural gas. The Justice Department refused to stop the merger, and Hart's subcommittee would not take it up.

Information and Insurance Business

The subcommittee has not yet shown any interest in the extraordinary series of mergers over the past two years which have combined electronics concerns, television networks, book publishers, companies that make photocopy equipment, slide projectors, scientific equipment, microfilm, etc. The large corporations active in these mergers are struggling to control the means of presenting information. It is a fight to corner a new market. The struggle is influenced by the government, because it buys much of the equipment. If the government wanted to ensure competition in the information business, it could help by being careful how it awards contracts. The subcommittee now says it may go into the information business late this year, by which time most of the basic mergers will have been carried out.

In 1965 Senator Dodd looked at the high risk auto insurance business and discovered that, during the preceding five years, 65 companies had gone out of business, leaving 300,000 people with $100 million in unpaid claims. On the basis of this information Dodd proposed, and Hart endorsed, a plan now before the Commerce Committee, whereby the government would set up a Federal Motor Vehicle Insurance Guaranty Corp. which would make sure people get paid if the insurance company fails. This is a bad bill. The big companies which dominate the insurance market are arbitrarily cancelling the policies of more and more drivers they regard as "high risks." This allows them to concentrate on the smaller market of preferred risks. The companies ought to be made to insure all sorts of risks, but the Dodd bill would not work to this end. Indeed, it would perpetuate the present insurance system. It would serve the interests of the large auto insurance companies by getting the government to shore up high risk operators (they are the only ones who need to be insured) who sell insurance at usurious rates to people cast off by established firms.

Hart has not made public the detailed story which is in the subcommittee's files on credit life insurance business. We do know that in taking out a personal loan from a finance company, it is often necessary to buy insurance to ensure the loan is paid back in case of the borrower's death. The subcommittee has information that illustrates how large finance companies own the insurance companies which write policies on their loans. The cost of this insurance is maintained at an artificially high level through a system of kickbacks, management fees and commissions. Even had the subcommittee been unwilling to publish this material, Hart or Dodd might have told the story on the Senate floor. Thus far they haven't done so, although hearings on credit problems, including insurance, are promised for sometime in '67.

Credit life insurance is not the only instance where the subcommittee has kept to itself facts that would be of general interest to the public. For some six years it has kept locked in its files price data from General Electric and Westinghouse, data said to demonstrate that both these firms have maintained a high price for light bulbs so that profits from their sale might be used to subsidize other less profitable operations. The subcommittee promises a tougher line of inquiry this year, but there is a growing suspicion that conservatives and liberals alike are quite content with the structure of industry as it is, and if this is so, then Mr. Hart's subcommittee is wasting its budget.

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Cops, Courts, and Congress

Is Citizen Safety Unconstitutional?

by Jon O. Newman

Supreme Court decisions in the field of law enforcement have spurred a bitter national debate. Some police officials believe they have been "handcuffed." A few even claim the new restrictions on police searches and questioning of suspects have "caused" the current increase in crime.

On the other hand, many attorneys and legal scholars insist the Court has done no more than provide needed protections for constitutional rights that would otherwise be violated. And they argue that these protections are needed to keep to a minimum the risk of convicting innocent people.

The controversy now involves the highest echelons of the national government. Congressional hearings have been held on proposed laws and constitutional amendments to overcome the effects of Supreme Court decisions, and more hearings are planned. Recently seven members of the President's Commission on Law Enforcement and Administration of Justice urged serious consideration of far-reaching changes in the Fifth Amendment.

Of the many recent Supreme Court decisions on criminal law, there are two at the center of the controversy – *Mapp* v *Ohio* in 1961 and *Miranda* v *Arizona* in 1966. In both, a defendant was convicted for violating the laws of a state. The Supreme Court reversed both convictions and, in doing so, announced new rules to be followed by police and courts in all the states in all criminal cases.

To date the major battle has raged over whether the new rules governing the police are necessary to protect the rights of individual citizens or too restrictive to permit the police to protect the safety of all citizens. This dispute has obscured a second, very practical problem: even if the police rules are accepted, what should happen to the defendant when a policeman fails to observe the new rules? Should the policeman's error *always* benefit the accused? Is it always necessary, as Cardozo put it, that "the criminal is to go free because the constable has blundered"?

In *Mapp* the Supreme Court dealt with police searches and seizures. The Constitution's Fourth Amendment prohibits "unreasonable" searches, a somewhat vague standard which the Court has been defining over the years. In general, a search is "reasonable" if it occurs during a lawful arrest, or if a search warrant has been issued based on some solid evidence. The Ohio police officers in the *Mapp* case had committed an unreasonable search. No member of the Supreme Court doubted this, and even the lawyers for Ohio did not seriously dispute the point. But the issue was: Could the evidence unlawfully seized – dirty pictures – be used at trial as part of the case against Miss Mapp? On this question, a five-man majority of the Court said "No" and reversed the conviction for possession of pornography.

The Supreme Court announced a new rule that whenever police obtain evidence by an unlawful search, the evidence cannot be used at trial. Previously, the Court had allowed each state to decide for itself whether evidence illegally obtained would be admissible in its courts. Nearly half the states had kept the historic common law rule that evidence, if reliable, is admissible no matter how it came into the hands of the police. A gun that fired fatal bullets and that bore the defendant's fingerprints could be considered by a jury even though the police lacked a search warrant when they found the gun in the defendant's home. Under the new rule, the jury would never know about the gun and the defendant might well go free.

In *Miranda* the Court faced the difficult problem of police questioning of arrested suspects. The constitutional rule in this area, the Fifth Amendment, says no person shall be "compelled" to be a witness against himself. Again, the constitutional standard is not too clear, and Court decisions have filled out the meaning. A defendant cannot be required to testify at his trial and a suspect, being questioned before trial, cannot be subjected to any physical or psychological form of compulsion to extract a confession.

The Arizona police officers in the *Miranda* case obtained a confession of kidnaping and rape from the defendant. The questioning took two hours, there was no claim of physical abuse and the claim of psychological pressure was not convincing. In short, it could not fairly be said that the confession had been "compelled," and no member of the Court said otherwise.

Nevertheless, the Court went on to consider two other questions: Should there be a new rule to govern

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police when they question suspects, and can a confession obtained in violation of the new rule be used at trial to obtain a conviction? A five-man majority of the Court said "Yes" to the first question and "No" to the second.

The new rule announced in *Miranda* requires that all questioning of arrested suspects must be preceded by a clear warning to the suspect that he can remain silent, that what he says can be used against him, and that before answering he can consult with a lawyer, whether or not he is able to afford one. If a suspect freely agrees to be questioned after hearing these rights, then his confession passes muster under the Fifth Amendment. The Court said the new rule was necessary to guard against the possibility of a compelled confession.

Echoing *Mapp*, the Court also ruled that whenever the police fail to give the required warning, any statement made by the accused cannot be used against him at trial. Previously, the Court had tested the confession of a suspect solely by the standard of voluntariness. If the statement was voluntarily made, it could be used; otherwise it could not. And whether the suspect had been warned of his rights used to be only one of the many factors the Court would consider in deciding whether a statement was voluntary. Thus, if a suspect was adult, reasonably intelligent, and familiar with criminal proceedings, a confession made after only 20 minutes of questioning would have been admissible at his trial despite the absence of a warning as to his rights. But a statement obtained only after prolonged questioning of a youth of low intelligence might well be considered involuntary and therefore kept out at the trial. Of course under the test of voluntariness, any evidence of physical coercion automatically vetoed use of a confession.

The critics of the *Mapp* and *Miranda* rules surely go too far when they claim that these new restrictions are somehow "causing" an increase in crime. People commit crimes for many reasons, but it is absurd to contend that a teen-ager deciding whether to steal a car goes ahead because he knows that if he is caught, the police will have to warn him before they can question him.

The more temperate critics do have a point when they observe that these restrictions will make the apprehension and prosecution of criminals less likely in *some* instances. However, there is scarcely any valid data to show that rates of detection or conviction are significantly lowered by observance of the new rules, though some decreases have been reported. But there is no dispute that as a result of the new rules, some convicted felons are set free, and charges against some dangerous criminals are dropped because a successful prosecution is impossible. A man who confessed to the brutal murder of his wife and children recently walked out of a New York City courtroom because of *Miranda* rule violations. The new rules have also freed hundreds of others whose guilt was absolutely clear.

Those who support the new rules often overstate their case in claiming that they are necessary to avoid convicting the innocent. Certainly the *Mapp* rule against using illegally obtained evidence cannot possibly add to the protection of an innocent person. If he is innocent, the most illegal search in the world will not produce evidence to convict him.

The *Miranda* rule comes closer to affecting the risk of convicting the innocent, but the relationship is more theoretical than real. Obviously if a person is compelled to confess to a crime he did not commit and thereby convicted, the grossest miscarriage of justice occurs. The celebrated *Whitmore* case reminds us that this can happen. Yet what effect do the *Miranda* rules have? Any police officers corruptly bent on coercing an innocent man to confess will not be deterred one whit. They will falsely testify that they gave the required warnings and the suspect freely confessed.

When the Police Overstep the Rules

Nevertheless, there is a strong case for the basic protections involved in both *Mapp* and *Miranda*. *Mapp* seeks to protect the right of privacy – the hallmark of a free and civilized society. Few would seriously argue that police officers should be allowed to make unreasonable searches of homes and offices, even if the Constitution did not prohibit such tactics. And the best rationale for *Miranda* is simply elemental fairness. If a person does have the right not to answer police questions (which all concede), does it not make sense to tell him about that right and let him decide if he wants to exercise it? What good is a right if it remains unknown?

Let's agree that police officers should not make unreasonable searches and should not question suspects without advising them of their rights. The second problem remains: what happens when the rules are not observed? Does it necessarily follow that any time police overstep these rules, the evidence obtained cannot be used with the result that the defendant very likely goes free?

In *Mapp* the Supreme Court said that evidence unlawfully obtained must be excluded from a criminal trial because there was no other effective way to make sure that police observed the rule against unreasonable

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searches. Indeed, the other possible restraints upon the police had not over the years proved effective. In many states a police officer who searches unlawfully can be sued for money damages or prosecuted criminally, but successful suits against policemen are rare, and convictions almost nonexistent. Internal discipline by police departments has been used sporadically.

Thus the Supreme Court felt it faced the choice of either relying on these ineffective sanctions and always allowing the use of illegally seized evidence, or using the more reliable weapon of always excluding unlawful evidence. It chose the latter, believing that a police officer will not search unlawfully if he knows that whatever he would obtain could not be used to convict anyone.

The Sensible Middle Ground

There is, however, another choice: a flexible rule that excludes illegally seized evidence in most cases. Such a rule would very likely be just as much a restraint on improper police conduct as the *Mapp* rule of automatic exclusion. Most police officers conscientiously try to follow the rules laid down by the Constitution and the courts. For most of them, the likelihood that evidence obtained unlawfully will not be used at trial is sufficient to deter them from making illegal searches. They want to see criminals prosecuted successfully, and they will not deliberately break the rules, especially as long as there is a serious risk that their misconduct will free the accused. But these policemen are not further restrained by a rule of automatic exclusion. The threat of probable exclusion suffices.

As for the handful of unscrupulous policemen, the absolute rule of exclusion does not deter them at all. They take the attitude that their job is to catch the guilty man, whether by fair means or foul. If he is later freed by the courts because of police misconduct, they simply criticize the courts and go right on ignoring the rules.

If a flexible rule would not lessen the restraints on the police, would it have any benefits? Simply this: in appropriate cases a menace to society would be put in jail instead of being freed to rob, rape or murder. If society can gain that advantage without encouraging police misconduct, it is worth a try.

How would a flexible rule work? The decision to admit or exclude unlawfully obtained evidence would be left to the discretion of the trial judge, to be exercised with regard to certain specific criteria. Among these would be the kind of illegality, the good faith of the police, the seriousness of the crime, and the prosecution's need for the evidence.

A search may be unlawful because the police officer's warrant had some technical defect. That might be overlooked, but not an illegality due to the officer's careless failure to bother to get a warrant at all. Similarly, evidence might be allowed if obtained by an officer who had to make an on-the-spot decision whether to stop and get a warrant or search without one when he feared evidence would be removed and destroyed. But evidence would be kept out where the police officer not only overstepped the rules, but had no plausible excuse for doing so. These decisions might go in favor of admissibility where the crime is murder, and against admissibility in prosecutions for breach of the peace. The evidence would almost always be kept out if the prosecution had other evidence to make a case. But if, without the unlawfully seized evidence the prosecution has no case at all, the trial judge might decide to let the jury see it. No one factor would control. The trial judge would exercise his discretion after weighing all the relevant criteria.

As with all other matters left to the discretion of a trial judge, his decision could be reversed if the state appellate court decided that in a given case he had abused his discretion and used the flexible role improperly. Furthermore, selective reversals by the US Supreme Court would insure that the standards for using the rule were being applied with caution.

A similar approach should be used to deal with interrogation of suspects. The rules announced in *Miranda* requiring advice as to rights should be followed. But not every statement obtained in violation of these rules need be excluded. Here again, just the threat of probable exclusion will insure that most police officers will give the necessary warnings. And the few who flount the rules are not deterred by automatic exclusion. They either take credit for "breaking" the case and ignore the lack of successful prosecution or they falsely testify that the *Miranda* rules were complied with.

The trial judge should have discretion to admit or reject confessions even though the *Miranda* rules are not strictly followed. Of course if the evidence shows that the confession is not voluntary, it would automatically be excluded. The risk of unreliability is too high to be tolerated, and any form of coercion is too hostile to our concepts of fairness. But if the officer gave substantially the *Miranda* warning, or if he forgot to give any warning under the pressure of a midnight street arrest of an armed hoodlum, or if the crime is serious, or the prosecution must fail without the confession, a trial judge should be permitted to weigh all these factors and then decide whether to admit or exclude the confession.

It is interesting to see how the *Mapp-Miranda* problems are approached in England, where regard for civil liberties is at least as sensitive as here. In the English criminal courts, evidence is admissible no matter how

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illegally it is obtained. And while British police are required to inform suspects of their rights before questioning them, statements taken in violation of this rule can be and often are admitted in the sound discretion of the trial judge.

If flexible rules for admissibility of evidence and confessions are to be tried, how do we get them? One way is for the Supreme Court to fashion them. This is unlikely in the foreseeable future since the Court's current majority apparently believes that the absolute rules of *Mapp* and *Miranda* are desirable.

The answer lies with the Congress. This is not to suggest that Congress take the extreme and perilous route of proposing a constitutional amendment. It is not yet clear that such a course is necessary, and any needless tampering with the Constitution in sensitive areas of civil liberties should be avoided at all costs. Nor is it suggested that Congress pass statutes to repeal the *Mapp* decision and permit *all* unlawfully seized evidence to be used, or repeal the *Miranda* decision and go back to testing confessions solely by the standard of voluntariness. Such legislation would be unwise and very likely unconstitutional.

What is proposed is a statute with a far more modest objective: the establishment of flexible rules of evidence. This legislation would recognize that both the search rules of *Mapp* and the interrogation rules of *Miranda* are desirable police restraints. Such a law would keep both sets of rules in force, but permit trial judges a very limited amount of leeway to decide that in exceptional cases, violation of the rules would not automatically keep reliable evidence from the jury and risk letting the criminal go free.

Public Security and the Bill of Rights

This proposal may well rest on a solid, if novel, constitutional basis. To see where Congress could find the power to enact such a law requires a further look at the *Mapp-Miranda* cases and at the Constitution. In each case the Supreme Court was reviewing a state conviction. And the Court determined that evidence should have been excluded to make sure that rights guaranteed by the Fourth and Fifth Amendments were protected. Yet these amendments are restrictions on the power of federal, not state officials. How then did the Court apply them to misconduct by state law enforcement officers?

The answer is found in the Fourteenth Amendment. It says that a *state* shall not deprive any person of liberty without "due process of law." The meaning of that last phrase is not self-evident, but the Supreme Court has ruled in recent years that "due process" includes many of the specific guarantees of the Bill of Rights, including the Fourth and Fifth Amendments. The Fourteenth Amendment, the Court has ruled, tells state officials that they may not conduct unreasonable searches that would violate the Fourth Amendment, and may not conduct coercive interrogation that would violate the Fifth Amendment.

Once the Court determined that the Fourteenth Amendment placed Fourth and Fifth Amendment restraints on state and local police, it then faces the question of how to make sure these restraints are enforced. As we have seen, it "enforced" the Fourth Amendment by ruling in *Mapp* that all unlawfully seized evidence must be excluded from trials. It also "enforced" the Fifth Amendment by ruling in *Miranda* that to guard against compelled confessions, suspects would have to be warned of their rights before being questioned. But these decisions were really enforcing the Fourteenth Amendment, since that Amendment was controlling in these state convictions. The Court undoubtedly had the power to develop these rules of enforcement but it does not have the exclusive power in this field.

The Fourteenth Amendment, in Clause 5, specifically gives *Congress* the power "to enforce by appropriate legislation, the provisions" of that Amendment. Then let Congress use that power. Let Congress enact legislation to provide that the Fourteenth Amendment rights to be free of unreasonable searches and compulsory interrogation shall be enforced by flexible rules governing the admissibility in state courts of evidence and statements obtained in violation of the Fourth and Fifth Amendments. Such legislation would give state trial judges discretion to allow or exclude such evidence based on such relevant criteria as Congress determines.

Such a statute would end the outrageous anomaly of present law by which dangerous criminals go free every time that necessary evidence has been improperly obtained. Of course some convictions are properly reversed and some criminals are properly freed when unconstitutional methods are found to have been used. The very idea of a Bill of Rights implies that civil liberties must be protected for all the citizens, even if the price is the occasional release of some public menaces. But the Bill of Rights does not say that this price must be paid every time the constable blunders. Congress can and should say under what circumstances that extremely high price must be paid.

Furthermore, solving the problem by legislation has the distinct benefit of permitting experience to prompt necessary changes. After a series of cases had been decided in which trial judges were permitted to use their discretion in admitting evidence, Congress would have the opportunity of gauging the results. If new standards for the exercise of judicial discretion were needed, the statute could be amended. And if it developed that confidence in trial judges had been misplaced,

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that the flexible rule turned out to be a sham, permitting widespread police misconduct, then the statute could be replaced by a new one providing for automatic exclusion of illegal evidence. But Congress should use the power it has to find out what the results would be.

Some will argue that even such a limited statute would be declared unconstitutional by the Supreme Court. No one can guarantee how the Court would rule. However, the Court would pause for a long, hard look before telling Congress that it could not enforce the Fourteenth Amendment in ways with which the Court disagreed. In any event, the possibility of an adverse ruling is no reason not to enact the statute and force the Court to face the constitutional issue.

Whether such a statute should apply to federal courts as well as state courts poses additional problems. The Fourteenth Amendment would not provide Congress with authority to enforce Fourth and Fifth Amendment restraints against federal officers, though other clauses of the Constitution may well give Congress such power. Moreover, it is not clear that federal prosecutions need flexible rules of evidence to the same extent as state prosecutions. Federal crimes, like those involving complicated stock and tax fraud schemes, are often susceptible of extensive investigation. The loss of evidence unlawfully obtained is not usually fatal. Yet with state crimes like rape, assault and larceny, there is often little to be gained by investigation no matter how extensive or scientific. Seizing evidence and questioning suspects are often the only ways to solve these crimes. Hence the greater need for flexible rules of evidence.

Whether limited to state courts or broadened to include federal courts, an act of Congress permitting unlawfully obtained evidence to be used occasionally in carefully defined circumstances would help resolve some of the most serious controversies in criminal law enforcement. It can maintain observance of civil liberties, yet assure a measure of protection to society that is now lacking. And in the long run, respect for constitutional rights will be enhanced when the public sees that these rights create sensible and effective restraints on police, but not automatic loopholes through which the guilty too often escape.

Guaranteed Annual Incomes

by Leon H. Keyserling

Last week in these pages, Robert Theobald, a socially-minded and creative economist, discussed the guaranteed annual income. He is rendering a real service to our economic education by his writings, but I favor the guaranteed income along lines quite different.

The proposition has been widely advanced that our economy is already too productive on a *per capita* basis to permit any American to live in poverty. Some would go further, and insist that none of our citizens should be permitted to live in what I have called deprivation – above the poverty-income cellar, but below the requirements for a minimum adequate standard of living. Essentially, the guaranteed annual income would provide, through federal action, income supplementation to those who otherwise would be in poverty, or below the adequacy budget, if one accepts the more generous approach.

Mr. Theobald and Professor Milton Friedman have come to be regarded as outstanding exponents of the guaranteed annual income. Professor Friedman calls his proposal "the negative income tax." There is, however, no single originator of anything so fundamental. The 1966 Report of the National Commission on Technology, Automation, and Economic Progress, appointed by the President, favored the principle of a guaranteed annual income, although it did not develop the theme in much detail.

The following discussion of Mr. Theobald's views is based on his books and speeches with which I am familiar. The discussion was not prepared as an answer to his article in *The New Republic*.

Mr. Theobald would supply the guaranteed annual income universally, without an adequate or realistic analysis of the problem of unemployment as such. In fact, he has argued that we should aim for a condition of "full unemployment." By this he evidently means that the freedom of every individual to do as he pleases, without the pressures or compulsions of work responsibility as customarily viewed, would be most conducive to developing the human personality.

The other mainspring of Mr. Theobald's argument is that full employment, or anything approximating it, is

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a futile aspiration and a snare, because in his view the advance of technology and automation will be so rapid that a very large percentage of those of working age will have no work opportunity in the conventional sense in the coming decade or two.

In purely economic terms, I submit that Mr. Theobald's thesis is not supportable. Of course, there has been and still is a secular trend toward acceleration of productivity or output per man-hour, under the impact of new science, new technology, improved working skills, modern management, fundamental research, and more informed public policies. But the average annual US economic growth rate which would be required to restore full employment, and then to maintain it, by absorbing the annual increments in the civilian labor force and in productivity, is only in the range of 5 to 6 percent during the years ahead. Achieving and keeping this rate would not seem unduly difficult; we averaged a 9 percent growth rate annually in real terms during World War II, despite the dislocations of wartime. And since the time, a few years ago, when Mr. Theobald first gained attention by insisting that unemployment *must* increase tremendously, we have reduced the full-time rate of unemployment from almost seven percent to somewhat less than four, without trying nearly as hard as we should. If four, why not two?

Not only is full employment possible, it is urgently desirable, even on purely economic grounds. In the final analysis, the material needs of a growing population are supplied through the national output of goods and services. We may use unwisely what we have, but we cannot utilize what we do not have. To bring all Americans (including the nearly 62 million who are now poor or deprived) up to income levels even one-third as high as the incomes now enjoyed (without corruption of soul) by university professors who told us some years back that we are already "opulent" in the private sector, will require *optimum* gains in productivity over the next quarter century. Ahead of us is the task of increasing from year to year the incomes and living standards of the affluent but not really rich who feel that their lives would be brightened, their security enhanced, and their opportunity for self-development broadened by higher incomes. We have to rebuild our decaying cities, rehouse the one-fifth of our people who live in urban and rural slums; provide modern medical care and full educational opportunity for all at costs within their means; develop our national resources and clean the air and water; sort out the transportation mess; carry a heavy burden of national defense, which may go on for years, with or without the struggle in Vietnam; and try to get to the moon. All these goals will require major employment gains during the next quarter century.

Looking only a decade ahead, sustained full employment and production will lift our total output of goods and services to a 1975 level more than $400 billion above the 1965 level. This means that during the 10 years 1966-75, our total output will average annually about $200 billion higher than it was in 1965. *A "Freedom Budget" for All Americans*, published by the A. Philip Randolph Institute in October 1966, shows what uses we could make of these gains in output. I doubt whether many people would want to draw a red pencil through any of the goals set forth in that budget. Possibly 50 years from now, our economy will become so productive *per capita* that we will be confronted with the entirely novel problem of finding out how almost a billion Americans may best use their time. But we aren't there and won't be soon.

And even if we should reach that point in far less time than I suspect, what about the rest of the world? Should we not apply vastly increasing allocations of our abundance to the war against the starvation and misery which are now the lot of a billion human beings; and to reinforcing their more rapid industrial development with our own capital goods and other resources? Whatever the situation in the United States may be, the world at large is still afflicted by ominous scarcities. It would be one of the greatest tragedies in history if, when for the first time the great nonsecret weapon of America's ever-advancing productive powers offers the prospect of fulfillment of the prophets' dream of plenty for all, we should consider blunting that weapon instead of using it to the hilt.

Useful Employment, Not " Made Work"

On psychological grounds, I am equally convinced that guaranteed incomes without job opportunity are not the major solution, in the foreseeable future, for those of working age now cursed with unemployment and poverty. About 40 percent of the able-bodied adult males in Watts are unemployed. While I believe that they should be provided with income until they get work, I believe it vital that they be brought into the mainstream of American life by obtaining the kinds of jobs which they (as well as others) regard as useful. A permanent income guarantee to them and *no more*, in order that they might pursue the kind of contemplative and creative leisure which Mr. Theobald envisages for them, would in my view make many of them more rootless and antisocial than some have become.

I therefore favor immediate efforts by our federal

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government to rethink and improve (along the lines I have suggested) all of those policies which maximize opportunities for useful employment at decent pay in private enterprise and by state and local governments. I equally favor *immediate* adoption by the federal government of a guaranteed full-employment policy and program, using federal financial resources to assure employment for all who are able and willing to work, including such training and educational programs as may be required.

None of this should be "made work." Our unmet needs in the public sector far exceed those which would be met merely by federally guaranteed employment for those now unemployed. In addition, the federal government should reshape the whole structure of employment recognizing that the valuable end of employment *per se* should be accompanied by employment which turns out more of the things the American people need most. I am not entirely sympathetic to those who insist that we should shape the job to the person rather than the person to the job. Providing slum dwellers with proper housing and medical care would add more to their personal development than asking those in the slums what they would like to do, and then trying to satisfy some vague and aimless eclecticism. In a practical sense, moreover, a full-employment environment affords the individual with more real freedom of choice than any alternatives which have been advanced.

Professor Milton Friedman is only superficially in some agreement with Mr. Theobald. Mr. Theobald's prescription is infused with social purpose; Dr. Friedman's is cold and limited. He would use the federal income tax returns as a basis for a "negative income tax," to be applied to those whose incomes fall below a fixed level, which Professor Friedman defines as a very low level indeed. The term "negative income tax" is a misnomer. A tax is an affirmative take of private income for public purposes, and there can no more be a negative tax than there can be a negative glass of water. What Professor Friedman is proposing is a universal subsidy to increase by a moiety the incomes of those whose current incomes are very low.

If this were all, it would be a start in the right direction. But Professor Friedman has more in mind. He would project, on a universal basis, the not very appealing concept of a dole for the poor. To understand what he is after, we need only read his book, *Capitalism and Freedom*. He would torpedo old-age insurance, unemployment insurance, and all minimum-wage legislation. He would get rid of public housing. He would abandon free public education. He has a deep aversion to our great public parks; he would put them in private hands, with admissions charged. He would even substitute a private army for our national defense forces. It is quite a commentary on the current state of public understanding that Professor Friedman, merely by proposing something that sounds new, has been welcomed warmly by an increasing number of perplexed liberals.

With guaranteed full employment, why is there still urgent need for a guaranteed annual income, and in what form? The answer is that, while about 60 percent of all the poverty in the United States is due directly or indirectly to unemployment, underemployment, part-time employment, and substandard wages when employed, about 40 percent of all poverty is suffered by those who are not or should not be within the employment stream. Among this 40 percent, about 25 percent of all the poverty is borne by our senior citizens. While I recognize that many of them want and should have work, and while I reject the prevalent practice of reducing many types of social security payments to these senior citizens insofar as they have other sources of earned income, it is nonetheless clear that the vast preponderance of them must depend upon income payments without work, if they are to live decent lives. The other approximately 15 percent of the poor are among the chronically ill, the disabled and handicapped, and among poor consumer units headed by women who cannot or should not (for a variety of reasons) have full-time gainful employment. (This is entirely consistent with the urgent need to expand employment opportunity, without discrimination, for a large majority of female heads of families.)

The guaranteed annual income which I prefer would be federal and provide a floor under the incomes and living standards, primarily but not exclusively, for this 40 percent of the poor. The income standards to be used might start with about $3,600 for a multiple-person family of four, with more for larger families, and at about $1,800 for unattached individuals. This is a matter of detail. The standards should advance as our average *per capita* national income rises. In any event, the precise determination of starting figures should be made by the federal government, in the perspective of the long-range budgets of our total

COMING: *Mr. Keyserling on the plan to share federal revenues with the states*

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resources and needs which I have frequently urged.

We would undoubtedly have to extend the guaranteed annual income concept to others, then to the 40 percent of the poor not available for employment. Minimum wage standards should be at least consistent with the guaranteed annual income. So should income derived from social insurance and welfare programs, although these should be rapidly replaced by a simple and consistent guaranteed annual income. In some industries where productivity is low and profits inadequate, consideration might be given to special federal tax benefits, or other forms of subsidies, which would enable payment of adequate wages. However, I think that we should move with extreme care, in projecting anything which would appear to subsidize employers who pay substandard wages. At the same time, we should not let ideological clichés block results.

Old Welfare System Obsolete

Why do we need gradually to substitute the guaranteed annual income, as I have defined it, for the current array of social insurance and welfare payments? The answer is that, after three decades, this array has failed. As of late 1966 among those aged 65 and over receiving OASDHI benefits, between two-fifths and three-fifths lived in poverty, taking into account their income from all sources. Millions of these people are not pressing against the poverty-income ceiling, but are from 25 to 50 percent *below* it. There are now approximately two million recipients of Old-Age Assistance, as distinguished from insurance. Among those aged 65 and over who receive Old-Age Assistance but do not receive OASDHI benefits, about nine out of ten live in poverty.

There are states where the average size of public payments to the aged for medical assistance range between $40 and $20 a month. In early 1966, the average monthly aid in the form of payments to the blind averaged less than $91, including nonmonetary payments. Meanwhile, state public assistance payments to the permanently disabled and totally disabled averaged less than $67 monthly in monetary terms, and less than $84 including nonmonetary vendor payments. In early 1966, assistance to needy families with dependent children averaged only $35.35 monthly per recipient, which on an annual basis would come to less than $1,276 for a family of three. And about 86 percent of the families receiving this type of aid received no other kind. The states have developed a special category of payments in the form of general assistance. In early 1966, the average monthly payments per case in the general assistance categories was only $31.48. These are cold figures. They don't describe the immensity of the neglect, because the number of the recipients represents only a small fraction of all who are in need. For example, under state programs, all types of aid to families with dependent children reach only about one million families.

Qualitatively, the aid under a majority of these programs is abominable. It goes hand in hand, in many instances, with the equivalent of paupers' oaths. I ran into one instance where a Negro woman, aged 94, with no income except $10 a week from a daughter, was asked to divest herself of her property in the form of the little house in which she lived as a condition of qualifying for welfare assistance.

The expense of substituting a federal guaranteed annual income for these travesties against the social conscience of the wealthiest nation on earth should not stand in our way for a moment. It has been estimated that it would cost only about $11 billion a year to lift *every* poor American family and unattached individual out of the poverty cellar. Putting aside those who should be helped by full employment and decent wages, the application of the guaranteed annual income along the lines I have suggested would cost in the neighborhood of $6 billion a year. That is less than one percent of our total national product now; far less than one-tenth of what we are spending for national defense; only about three percent of the *average annual* amount by which our total national product in the decade ahead should *exceed* what it was in 1965; less than the increased interest costs in the federal budget due exclusively to the economically unsound and socially iniquitous upward spiral of interest rates since 1952; less than the annual level of that portion of the 1962-1965 federal tax reductions and concessions which were economically unsound and socially regressive. And these are really superficial ways of measuring the "cost." The $6 billion estimate does not allow for reduction of the costs of the appalling program for which the guaranteed income would gradually substitute. The estimate does not take account of the benefits to the whole economy which would result from developing the greatest undeveloped market in the world for the products of our industrial machine – the poor or deprived among us.

The issue is neither economic nor financial. It is moral and political. Nor can I accept the view that what we are actually doing now represents the apogee of "political feasibility." The ceiling of feasibility is very much higher than the floor of an easy consensus.

Profound social gains are forged in the heat of battle. This has been our entire history. I believe that the guaranteed annual income in workable form will come to pass in the not-too-distant future, if we steer between the excesses of Dr. Theobald and the limitations of Dr. Friedman, and respond to the common sense and practical idealism of the American people.

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GILBERT A. HARRISON *Alice B. Toklas*

Alice Toklas had almost reached 90. We had a joke. Last spring on her 89th birthday in Paris, I promised to return with my wife, for a celebration of her 90th on April 30. She said she might not last that long. I said I expected people to keep dates they made. She was by then no longer able to walk. A few years earlier she had become almost totally blind. An operation restored enough sight for her to read with great effort. You entered the room and she would be sitting by the window, holding a large magnifying glass above the page. I had just come from an exhibition of Picasso's recent paintings and I told her I didn't think she needed to see them because they weren't that good. "*You* may not like them," she said, "but you cannot say that *I* would not like them. I'll see them for myself." She was a strong-minded woman. A few years ago, she said to Joe Barry, tapping her head, "*This* will be the last to go."

She thought old age was an indignity, and she didn't know why the Lord let her live so long after Gertrude Stein's death at the end of World War II. To those who saw her in those worst, saddest months, she seemed a shadow; she spoke of herself as "nothing but the memory" of Miss Stein. But she had always been more than that, and the next 20 years were proof. Her own character gathered itself around not only keeping alive the name and work of Gertrude Stein (all the unpublished writings got into print through her persistence), but also around her gardening, dog walking, cooking, and the writing of memoirs, a cookbook and endless letters on any stationery that happened to be at hand. ("This paper is somewhat used, as an American once said of the renaissance furniture his wife was buying.") And from 1947 on, there were the frequent though not constant calls by friends, acquaintances and curio hunters, on all of whom her acute judgment was visited. Some were "undesirables whom I once was fond of who now want sympathy, advice or just the address of a good hotel in Istanbul, or the address of a schoolmate, or an autograph of Gertrude's youth." There were others, such as Thornton Wilder, who "called to take me to supper with such gaiety, such Wilder cheer . . . and then breathless but not speechless (that's Wilder too isn't it) proceeded like a magician to produce from a valise more than a valise ever held before, real Kentucky whiskey, tins of lobster, nylon stockings." Here she was writing to Isabel Wilder, to whom she promised that "when Thornton comes back, we'll open [the whiskey] and I'm going to taste it too and then it will be corked and put away in the furthest dark corner of a little hideaway shelf and when you are merry we'll have a nip. It will be a wild moment, won't it." She was 74.

She had come to Paris in 1907, in her middle twenties, had met Miss Stein and been captivated. She later recalled that "Gertrude laughed her wonderful and what she called her distralto laugh. It was the first thing I heard from her that afternoon that I arrived in Paris 40 years ago next September. It came from under her coral brooch – and it was coral color, like the brooch." They were established in the rue de Fleurus, Alice managing, Gertrude writing, for nearly 25 years, after which they moved to 5 rue Christine. There Miss Toklas stayed for most of the two decades of her life alone, caring for the furniture and the pictures and the white poodle they had had together. Then the pictures were taken away by court action brought by the heirs of Gertrude Stein's eldest brother, who, under Miss Stein's will, were to have the paintings after Alice Toklas' death. The court said, in effect, that she couldn't be trusted with those early canvases of Picasso, Matisse, Juan Gris. The rue Christine apartment was finally taken away too. The house had been sold, the new owner had another tenant in mind. Friends tried to prevent the eviction, without success. It was a nightmare. Alice wrote Donald Gallup of the Yale University Library that her maid, Madeleine, thought "that if General de Gaulle is not going to save me I had better go to a hotel at once!" A new apartment was found. The walls were so thin that "a neighbor sneezed the other day and I heard it distinctly." Tenants were not permitted to hang pictures, but "I only have one, a Dora Maar, and that is put on the floor against the wall." She was 86.

The one picture she minded not having had been gone long since. Gertrude Stein left Picasso's portrait of her to the Metropolitan Museum in New York, and on the day it was picked up to go to its new home, Alice and Picasso bid it farewell. "Picasso came early and stayed a long time with me alone," she wrote. "He was very sweet, at his very best, and then when he got up to go he said 'Eh bien, neither you nor I will ever see it again.' And he stood alone in front of it quite a few minutes drinking it in as only his eyes can. And then he saluted it quite seriously, quite simply, and he kissed my hand and said 'Au revoir cherie.' After all, the portrait is their youth, its intensity and theirs are all one. And I missed its going so very much."

Gertrude Stein had read anything and everything in English that came her way. Alice was more selective. She settled, finally for Henry James and Ivy Compton-Burnett, the latter "witty and amusing beyond words." She would quote with relish Ivy Compton-Burnett's complaint "I don't understand why I am not a best seller, don't I write about the scandalous subjects people love to read – adultery, incest, embezzlement?" But the most exciting books, first and last, were cookbooks. Shortly after returning to Paris with Gertrude Stein from their one and only journey back to the United States in the thirties, Alice wrote a Chicago friend to thank her for a cookbook that "has been a consolation and an inspiration in these busy upsetting interrupted days before moving. When things get too black, I peer into it and am immediately lost to everything outside. That's what a real nice cookbook

(Continued on page 37)

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Works of Integrity

by Irving Howe

Here are two first books of fiction, both by talented writers and each strongly individual in flavor. Neither is affected by current fads, theories or compulsions. No linguistic orgies, no cozy transactions with apocalypse, no indulgence in "black humor," that burnt offering by a fashionable bohemia to a sated middle class. Miss Fox and Mr. Liben are serious writers,

Poor George
by Paula Fox
(Harcourt, Brace & World; $4.50)
Hunger Justice
by Meyer Liben
(Dial; $4.50)

which means they offer no provocation to noise, scandal or exhibitionism and will, therefore, almost surely be neglected by our culture of publicity. They stand at different levels of accomplishment, Miss Fox at the beginning of a career and Mr. Liben at the culmination of a few decades of limited but interesting work.

Poor George is close to that genre in which American writers have frequently been distinguished: the short novel, which sustains a certain complication of event yet not a full-scale action, which develops through a single narrative tone, and which drives toward its climax with a direct, even ruthless speed. It is characteristic of this kind of fiction that we value it not so much as a faithful or comprehensive version of social reality, but as a compact drama approaching self-containment and achieving its impression through a single thrust of incident. And it is further characteristic of this kind of fiction that in its lucid, almost fanatic economy, it should seem to verge upon – though it never really becomes – allegory.

Poor George deals with the life of semi-intellectuals, sensitive and decent people who work at shabby jobs in bookstores, libraries and high-toned private schools; who suffer unheroically from the disparity between their consciousness and their capacity; who seem destined to be the most lasting victims of our incurable and undefinable malaise. Yet nothing could be more shameful than to condescend toward such people: they are after all, the evidence of our cultural "progress." Indeed, one of their troubles – as Miss Fox shrewdly implies – is that, in their passivity, they are too susceptible to the directives and moods of the culture. In describing such people through a series of rapid, sharply turned scenes Miss Fox displays a gift for what I would call mordant literalism, something far more terrifying than the most extreme outbursts of our most extreme apocalyptics. In passage after passage Miss Fox vindicates the fictional uses of this clipped realism: a chilling record of a faculty meeting at a "progressive school," a low-keyed description of a suburban party which makes Hecate County look like fun, a few pages in which husband and wife try to shake loose from boredom by a weary little dinner and a trip to the movies. From such bits and pieces the mosaic of fiction is built.

Poor George seems entirely of the present moment, in the sense that it focuses on the deracination of New York life, the sadness of work that simply drags on and marriages neither good nor bad. Yet what interested me most about the book is that while Miss Fox is entirely caught up with the experience of the contemporary, she is largely free from its cant and bravado. It is something of a miracle that a new and sophisticated writer should be so unstained by the nihilism and coarse primitivism of the sixties, all those notions that are here today and still around tomorrow. In a few passages, however, an anxious summarizing remark bears the imprint of the intellectual fashions of the early fifties – the ethic of thin-lipped stoicism, stagnant wisdom about the human heart, etc. It is not a very important fault, but a bit of blue-penciling would have helped.

What does seem to me to mar this fine novel is a certain *literary* single-mindedness. A glance at the plot may help clarify what I mean. Into the suburban life of poor George, a private schoolteacher burdened with an unused and restless wife, there enters a teenager named Ernest, half lost soul and half hoodlum. Some latent idealistic sympathies are roused in George and he decided to tutor the boy, thereby hoping to engage in an act of moral salvage. There follow a crisis in George's marriage, a rather melodramatic climax, and then a resolution of sorts. What Miss Fox has done here is to set up a network of personal relationships which is then threatened by the intrusions of a hostile figure – with the intrusions so dramatized as to reveal the rot that had long been gathering in the personal relationships. This fictional strategy is both familiar and sound. But the difficulty is that Miss Fox becomes so intent upon driving her narrative toward climax and resolution, she weakens it as a portraiture that is supposed to be intrinsically significant. The drama of telling is paid for with uncertainty of showing; we are shaken more than clarified. Perhaps it is the result of too much art and not enough life. Nevertheless, an absorbing book.

Justice Hunger consists of a short novel and nine stories. I liked especially the novel, *Justice Hunger*, and two stories, "A Note on Chivalry" and "The Dream Issue." My fear is that in trying to describe Meyer Liben's work I will make it seem excessively familiar, whereas the real problem is that it is highly idiosyncratic. Now in his fifties, Liben has been publishing sparsely for a good many years, and because he has gone his own way completely, he has gained what is

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perhaps the greatest reward a writer of fiction can have: a voice and rhythm of his own. The style he employs is of a kind that permits only limited effects and can easily become tiresome, for it is a style which stakes a good deal on mannerisms of simplicity. But within his self-imposed boundaries Liben works with skill.

Justice Hunger shows New York in the thirties. Young people float on air and talk, without money and seemingly untroubled by its absence, their heads buzzing with slogans, their hearts snared by "the justice hunger of the metropolitan radicalism of the time," yet in their very rootlessness able to strike up sudden relationships of purity and closeness, which then, like their talk, drift off into very little. A familiar world, my old country.

The atmosphere is intensely Jewish, but without exploitation, sentimentalism or local color; it is simply what Liben knows, the world of cafeteria culture, drifting, leisurely and uneasy. If one feels a little (but not much) nostalgia, that is due less to its famous political "commitment" than to its less-noticed personal freedom. Having nothing much to do, the people in Liben's world attend to serious matters: intellectual speculation, spiritual disciplines, politics, an amusing disquisition on how the absence of the telephone formed the structure of Dostoevsky's novels.

The material has been used often enough, but Liben's treatment is fresh: his prose is lucid, wry, often charming. He is that rare bird, a *likeable* writer. He speaks through the voice of a first-person narrator, a bright if somewhat fussy chap, who tells the story, reflects upon the age and steadily watches himself with a kind of fastidious detachment. It is a voice one comes to enjoy, for it is civilized, playful and ironic. And just because it is original, one gropes for literary comparisons: a little like Daniel Fuchs in *Homage to Blenholt?* or like Delmore Schwartz in his stories, with their rhythms of flatness, rhetoric of anti-rhetoric, and tags of self-pity deliberately exposed? or like that portentousness which Melville affects with marvelous comic results in "Bartleby?" No matter; Mr. Liben is his own man. Here is a paragraph:

> "This café, now unfortunately extinct, was at the time one of the glories of Second Avenue. It was the haunt of the East Side intelligentsia, of Yiddish journalists and theatrical figures, of merchants, kibbitzers and *Luftmenschen*, an easy-going cosmopolitan restaurant where one could sit at leisure, and where the food was tasty. Then Broadway produced a play about the café, called it *Café Crown*, and in trying to live up to this dramatic image of itself the Café Royal came to its end. Such is the power of art in our complex society. No doubt considerations of an economic nature were also involved. . . ."

And another passage about the Waldorf Cafeteria:

> ". . . from whose tables the sugar bowls were removed. . . . We both loved cafeteria conversation – the bareness of the place (no sugar bowls or ketchup on the tables), the absence of waiters, the hum of the conversation at other tables (a steadier and deeper hum than restaurant hum), the joy of getting to know one another by an exchange of views. It was a kind of paradise, if paradise is a life where time speeds easily, all pressures, fears, premonitions and tensions are forgotten, where learning and pleasure go hand in hand."

Obviously there are limits to what can be done with this kind of writing. It does not allow for grand effects, major passions, violent denouements, all of which, as it happens, Mr. Liben seems to suspect. (A wild comparison: Meyer Liben is to radical New York a little like what Jane Austen was to 19th-century England, with the proletarian fiction of the thirties our equivalent to the absurd gothic novels of the late 18th century.) Liben's art is that of small effects, six inches of . . . well, not Miss Austen's ivory but Woolworth's silver. But despite his concern with surface – and good literature is mostly surface, bad criticism mostly depths – Mr. Liben can reach toward a deeper emotion, a sudden recognition by his narrator that all the talk may be no more than self-defensiveness and all the irony a token of impotence.

Among the stories, "A Note on Chivalry" is a nicely executed fiction about a New York party, full of cleverness and tenderness (it's the combination that matters), and "The Dream Issue" is a story about the young, one of the best of its kind I've ever read. The "dream issue" is an issue of a student newspaper, obviously published at City College, one in which everything turns out right: the stories, the headlines, the makeup. The young editors enjoy that marvelous feeling which comes when you are young enough to expect everything from life and old enough to have done well a little bit of actual work. It is really a lovely piece of writing.

Several of the other stories fall into the weakness that seems inherent in Liben's method: a kind of loose-jointed reverie without narrative edge or completion, a prose of minor indulgence. Perhaps it's a case of too much life and not enough art.

But anyway, here they are, two interesting writers, a beginner who deserves a hearing and a veteran who merits recognition. I hope that, amid the din of happenings, camp, the Absurd, the Anti-Novel, black humor and trips, a few serious people will read these books.

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NOTES ON CONTRIBUTORS

Irving Howe, *a contributing editor of this journal, has recently completed a book about Thomas Hardy. It will be published by Macmillan later this spring.* Philip Toynbee, *son of the historian, is completing a trilogy of novels.*

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Speakers' Corner

by Philip Toynbee

For years now Speakers' Corner at Marble Arch has been one of London's stock tourist attractions – an institution which brings the same kind of modest grin – "*Aren't* we quaint!" – to the face of most Englishmen as the mention of our wonderful policemen or of the Beefeaters at the Tower of London. It is generally held that Speakers' Corner is not only unique but the

The Speakers
by Heathcote Williams
(Grove; $5)

sign of a unique degree of freedom and democracy. I can't see, myself, that it is any different, either in principle or in general effect, from Union Square or Columbus Circle in New York. But if there *is* anything special about Hyde Park it must lie, I think, in the long tradition of oratory in no cause and about no subject. The original anti-speaker, as he would be cherished today, was Bonar Thompson, a very engaging figure of the thirties who could talk for three or four hours on end without saying anything at all. He was also, as I once discovered, an interesting man to talk to in private. His motives were purely financial. At the end of every speech he would tell his audience (a) that he wasn't allowed to collect any money in the Park, (b) that he would be standing just outside the Park railing if anyone happened to be passing that way. He made a modest but adequate income, and thoroughly deserved it.

Mr. Heathcote Williams' book about the Hyde Park speakers belongs to the comparatively new genre of touched-up documentary. The best recent example of this genre in England was Nell Dunn's *Up the Junction*, a funny and tragic account of adolescent slum life on the South Bank. Mr. Williams' subject is odder than Miss Dunn's, but it is also much more obviously jokey. He has introduced three lay-about characters – himself, I suppose, divided into three for the purposes of dialogue – and he has introduced them to the Park and to four of its more prominent regulars. The effect is not always happy. The advantage for an author of this particular form is that it allows him to mingle fact with fancy to his heart's content. If one of the "real" characters fails to come up to scratch, his dialogue can always be toned up a bit. But this is a disadvantage to the reader in precisely the degree to which it helps the writer. We never know which bits of reported speech are authentic and which have been invented. In the end nothing seems authentic.

But this incredulity, although it is the fault of Mr. Williams, is almost certainly unfair to him. From what I know of the kind of characters he is presenting I believe that most of the private speech in this book is honestly reported. And we can safely assume, of course, that Mr. Williams has been a faithful transcriber of what the speakers say from the soap-box. The book would be pointless – as well as immediately vulnerable – if this were not the case.

There are plenty of ordinary speakers in Hyde Park – the kind of speakers who are found wherever public speaking is allowed. There are Trotskyists and Anarchists, militant Protestants and members of the Catholic Truth Society; there are atheists, Zionists and members of the Irish Republican Army. But Mr. Williams was well-advised to choose four speakers in the Bonar Thompson tradition. His four are MacGuiness, Irish wit, bum, drunkard and dope addict; Axel Ney Hoch, a driving instructor during the week who comes to the Park on Sundays to shout compulsively about the evils of the age; Webster, ex-fascist and anti-Semite who spends much of his time in loud and offensive apologies for his past; and finally Van Dyn, South African Dutch by origin, a comic burglar in appearance whose extravagant claims to past villainy are seldom borne out by investigation.

Mr. Williams allows us to hear each of his speakers in action; then takes us behind the scenes, showing us where they live, how they spend the

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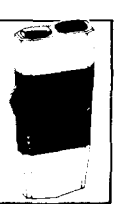

rest of their time, and how they talk *when they are not orating*. The dullest of the four is Van Dyn who always makes exactly the same speech, with the same jokes, and who has no small talk. The other three seem to talk in private much as they do in public – compulsively, amusingly up to a point, eloquently in the sense the nonsense is vividly purveyed. Here is MacGuinness speaking in the Park – he could as easily be talking in a pub:

> "Take the example of a man walking barefooted. That's the only way a man stands on his own two feet. You try walking around barefooted. By Jesus, every single one you meet will offer you a pair of shoes. I had a friend once, his name was Teddy Gorden. He was an Irish Jamaican Arab. The Jewish Buddha. He used to FLOAT around London. No shoes. They say you must wear shoes. You must do this. You must do that. You push the English, that doesn't matter. You push the Americans, that doesn't matter. You push the blacks, that doesn't matter. But the day you push the gypsies, you'll blow yourself up. They're going nowhere."

Ney Hoch is saner than this; less inconsequential; sometimes even cogent; even moving. Webster is wittier than MacGuinness; Van Dyn is much more boring. But the MacGuiness graduation will serve to show more or less how they all go on. And I suppose the question we are rather dismayingly left with at the end of Mr. Williams' book is whether their talk is good enough to be recorded. I think myself that the book *was* worth making. These characters are not so original or so outlandish as they seem to think, but it is to their credit that they do sometimes rise to a universal defiance which amounts to a genuine criticism of the way the world is run. They are in the mountebank tradition – mockers of the world their audience belongs to, mockers of themselves for their own pose of mockery. After listening to a debate on housing in the House of Commons it would be refreshing to listen to MacGuiness for a quarter of an hour.

Yes, but probably not for much

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longer. There is the hint of an implication that true wisdom is to be found in Hyde Park if you know where to look for it. And this implication – if it is indeed there and I am not doing Mr. Williams an injustice – suggests the fashionable willingness to believe that nonsense is somehow more subtle and more profound than sense. Blake has much to answer for: he encouraged the fool to persist in his folly and assured us that we shall reach wisdom if we follow the road of excess. But we find that persistent folly usually leads to unredeemed boringness and that constant excess leads to nothing more illuminating than pretentious nonsense.

This is an entertaining book and the men it describes are excellent entertainers. It would be an excess of folly to make more than this either of the book or of its subject.

MOVIES

The Glamour of Failure

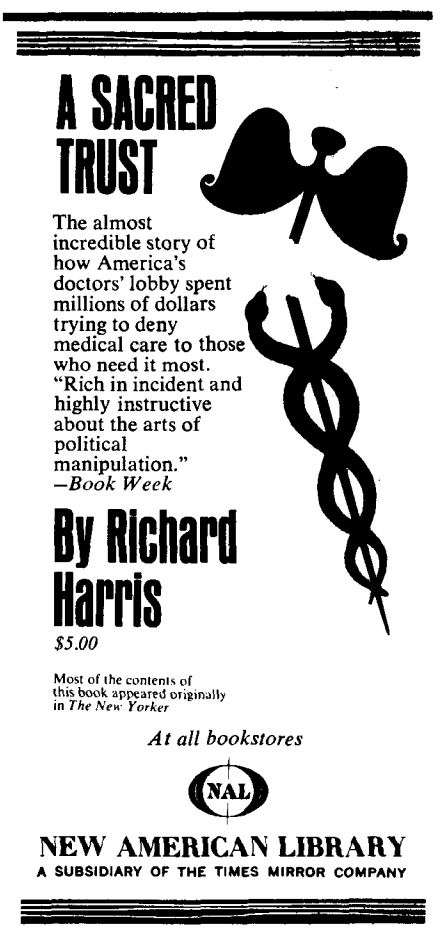
La Guerre est finie
(Brandon Films)

An aging actress, finishing up her fifth marriage, and in her third decade of analysis, used to entertain friends by explaining her affairs. She'd go on something like this: "There's all that talk about the eternal triangle, but we run around in the eternal circle. When I was fifteen, there was a kid I liked. Once he chased me all around the living room and then upstairs. I was running around the bedroom for I don't know how long when he stopped and said, 'You wanted to stay. The doors were wide open all the time. You could have run out instead of running around the room.' That's it, after a while with compulsions, you lose the facts involved; you just get lost in the movement. Nothing leads up to anything. Running from one trap to another, leaving somebody desperately, running to somebody else, and feeling trapped the minute you get in."

She didn't believe in love, but she sure loved to go through the motions. She would explain her latest involvement with, "Every sex relationship I've ever had has been degrading. I could stop having anything to do with men, but I guess I'd rather be degraded." And after she told everybody exactly how impossible her latest affair had become, she would still go on with it. She'd say, "I'll probably never have this experience again. I might as well get all the sensations out of it. What I've had I don't have to miss." Her baby face was going hard, her upper arms were flabby, but she made herself seem more gallant and more appealingly romantic than those who still hoped for something. She made so much capital out of failure she almost passed for a success.

At its best, *La Guerre est finie* is an attempted elegy on the theme of exile, on living on old ideals, on living in the past, on not relating to the life that is actually being lived. But the variant of existentialism that is used in presenting the hero is embarrassingly close to my old actress-friend's whorey Freudianism. Though in her version of her life, she was the heroine because so obviously willing to go on being victimized, we listeners didn't necessarily view her that way. In *La Guerre est finie*, however, we are asked to believe in the hero's humanity because although he no longer believes in the effectiveness of his "anti-Fascist" activity, he goes through the motions just the same.

Diego – Yves Montand – is a "professional" (euphemism for "paid") revolutionary in Spain, a courier in the Communist underground, a man for whom the conspiratorial life has become a matter of habit and reflexes. The movie opens as Diego crosses from Spain into France to warn another agent that a trap has been set for him if he goes into Spain, and it ends as Diego goes back and we learn that the trap is set for him. Diego goes on, without conviction, carrying out plans and policies he knows are futile because that's what he does, or, as we used to be told in those pre-existential pukka sahib pictures when C. Aubrey Smith or Sir Guy Standing sent the regiment out to defend a hopeless position, "He does what he has to do." But movies have changed – a little – and the director, Alain Resnais, is careful to play down the heroism; Montand is like a weary commuter who's been through it all so many times he can see what's coming. And so do we, in anticipatory flash forwards – jump cuts into an imagined future – one of those peculiarly naïve, long-abandoned devices that are frequently hailed as technical innovations. These flashes (some of them may be projections of the past into the future) are obviously supposed to be fast as the speed of thought (though does anybody think this way, with fully detailed visual apprehensions cutting into the present?); as there isn't time to figure out what they relate to, we are forced to admire them for themselves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or ignore them. The technique doesn't work, but we get the idea behind it that for Diego past and future are one.

It's easy to satirize force of habit – as W. C. Fields demonstrated when he blew the head off an ice-cream soda – but Resnais, although he allows most of the other revolutionaries to appear ridiculous, protects Diego very tenderly. He's not presented as a fool or a tool but as a noble almost-extinct animal – the exile who cannot forget, who cannot make a new life. And the liberal audience, which sees so few screen heroes it can call its own, may be so touched by a film on a contemporary political subject or a contemporary experience of any kind that some may be willing to overlook the nature and quality of the contact – like Dwight Macdonald when he hailed *To Die in Madrid* as a masterpiece. It's a simple mistake in the arts to assume that anything that moves us must be a masterpiece, that we wouldn't be affected if it weren't great (it's the same mistake made by those who call *Gone with the Wind* or *The Sound of Music* or *The Pawnbroker* great).

Although those most sympathetic to the theme have a way of concluding that the technique is masterly, *La Guerre est finie* is smooth and rather banal in its technique despite the little hiccups of earlier Resnais "style" – some pretentious "ritualistic" narration (that recalls *Marienbad*) and those obtrusive jump-cuts (out of *Muriel*). They are tossed in almost as a Hollywood director imitating Resnais would toss them in – to prove that he can do it too; they become mildly irritating devices of conventional movie storytelling.

It is on whether we can accept Resnais' (and presumably scenarist Jorge Semprun's) attitude toward Diego that our own attitudes toward the movie will almost certainly be based. Diego the incorruptible failure, committed to irrelevance, is the very model of a sentimental liberal's idea of a good man. Can we go along with his glamorized melancholy (and the assumption that his political activity was once useful though now out of touch) or do we see it as a Frenchman's Hollywoodization of a lummox of a party hack? One might speculate that for some the futility of Diego's commitment has the beauty of making them feel there was no way they could have done anything anyway: Diego can only go slogging along on those same stupid errands, accomplishing nothing. The audience can transpose the elegy to the grateful hymn, "There but for the grace of" some instinct of self-preservation.

In the most interesting sequence, Diego encounters a group of the young new left, who propose bombs to scare off the tourists who are supporting the Spanish economy, but he does not connect with them. He goes back to try to plot a general strike. (As that old actress used to say, "I thought it was so bad that I could only learn from experience that I refused to learn from it.") What a relief to the art-house audience that their hero rejects such wild suggestions and goes back to passing out illegal pamphlets; they may look for one as a souvenir of their trip to Spain this summer.

In movies today, perhaps the clearest indication of how we are meant to feel about a character is the quality of his sex life. Diego has such high quality sex that when he goes to bed, we hear a heavenly choir. Resnais provides him with a little sex kitten (Genevieve Bujold) as well as a handsome, mature mistress (Ingrid Thulin). Of course he doesn't make the overtures to the kitten: she propositions him and, being a gentleman, he doesn't turn her down. After all, he's human – which is the movie's explanation of all he does and doesn't do (and, as in Hollywood pictures, being human means giving in). In the bed sequence with the girl, the disconnected limbs of her body are treated abstractly for an amusing suggestiveness: toes, hands, thighs parting – it's so chic and economically done, it's very funny (and probably a conscious parody of the abstract treatment of body parts in *The Married Woman*). The contrasting sequence when Diego visits his mistress is chic, too, but is, unfortunately, not intended as parody but as the way it should be – satisfying, deep. Now the woman's torso is featured – her trunk – and she is no mere casual diversion, she is the true wife, the woman who waits, the woman who is too good to be anything but too good. It's a long way from the thirties

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and tunes like "I kissed a Communist, is my face red?" Now a woman gets a halo when she goes to bed with a Communist. Sex in this movie (and not only in this movie) is so uplifting and so solemnly sanctified, it seems to have taken the place of going to church. That soprano vocalizing is so phony it reminds one of Colette's description of the courtesan who trilled when she was pretending to be thrilled.

Resnais and Semprun have hit upon perhaps the only way a radical can be acceptable as a screen hero: when he's too numb and apathetic to argue. And Yves Montand has the stoic manner of a man whose emotional and intellectual limits were set early – so that he's loyal to his old mistakes. We know, from past experience at the movies, that he would be about the same if he were playing a tired businessman or a State Department man carrying on a war he doesn't believe in, but he's good to watch anyway. He has that face that looks as if it's been lived in – not an actor's face, and he's got a bit of a pot that hasn't been hoisted into an actor's chest. Watching him in *La Guerre est finie* is like being with those people who are more convincing when you're with them than when you think it over.

La Guerre est finie is a moderately good movie and I enjoyed it, but I enjoyed it at that middlebrow level on which movies are so often enjoyable; and what I'm trying to get at here is how a movie works on the preconceptions of an audience, how a moderately good movie can be taken (by liberals in this case) to be an important work of art if it rubs them the right way.

Fifteen years ago Yves Montand appeared in a movie that *was* an existential melodrama, and the contrast between the toughness of Clouzot's *The Wages of Fear* (which was an art-house success) and the gentleness of *La Guerre est finie* (which is also an art-house success) suggests a change – a softening – in the audience. As *The Wages of Fear* has not played in this country for almost a decade, I'll attempt to refresh memories. It was made in France, though it recreates a South-American town with nearby American oil installations. The opening sequence shows us the town and its inhabitants – an insect heap, a final human melting pot of primitivism, corruption, and decadence, and without any civilizing elements. The only ambition of the inhabitants is to get enough money to escape. An oil well 300 miles away has caught fire, and the only way to put it out is by exploding it out with nitroglycerine. The oil company offers four men $2,000 each to drive two trucks loaded with explosives over rough terrain. The four men are Mario, a Corsican (Yves Montand); Jo, a Frenchman (Charles Vanel); Luigi, an Italian (Folco Lulli); and Bimba, a German (Peter Van Eyck). The body of the film deals with the men's responses to the crucial test of driving the trucks.

Jo has gone to extreme measures to get the chance to drive (possibly he has even murdered for the chance) and once in the truck he tries to run away. Mario drives the truck over Jo because he thinks that is the only way to get the truck through an oil-filled crater – and the truck stalls anyway; he has destroyed Jo for nothing. Bimba's extraordinary courage is rewarded: Luigi takes off his cap to him. A little while later they are both blown to bits.

Courage, caution are, finally, irrelevant to fate; they are human gestures – necessary but absurd. The truck with Bimba and Luigi explodes; it could just as easily have been the truck with Mario and Jo – and though their's doesn't explode, they die anyway.

It is a senseless kind of human situation: the men are not even as flies to wanton boys; there is not even the control of careless malevolence. No one's to blame; destruction is impersonal. In this violent thriller-parable, human (that is to say, decent, civilized) ges-

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tures – whether based on decision or impulse – are all that is left to man; they appear to be desperate, absurd holdovers from some archaic human period when character had something to do with fate, or from the human delusion that it does.

Well, Diego has his gestures, too, but there's no life or beauty in them because he's lost the facts involved. And so we may wonder why Resnais makes him a sad, classic hero – as if a man who went on doing something dumb long enough acquired nobility. *La Guerre est finie* is soaked in romantic defeatism, in a mushy poetry of hopelessness, in existentialism used decoratively to make a hero of a man who just got lost in the movement. *La Guerre est finie* is damp from the Marseilles fog of the French films of the thirties – which is what, in the fifties, we admired Clouzot for cleaning away.

PAULINE KAEL

LETTER FROM STANFORD

Humphrey and the "Now Generation"

Noam Chomsky closes his recent essay, "The Responsibility of Intellectuals," (*The New York Review of Books*, February 23) with a statement made by Dwight Macdonald twenty years ago: "Only those who are willing to resist authority themselves when it conflicts too intolerably with their personal moral code, only they have the right to condemn the death-camp paymaster." Chomsky adds: "The question, 'What have I done?' is one that we may well ask ourselves, as we read each day of fresh atrocities in Vietnam – as we create, or mouth, or tolerate the deceptions that will be used to justify the next defense of freedom."

For most of those who are opposed to the war, the question, most often, is not "What have I done?" but "What can I do?" No matter how much we march, petition, or demonstrate, the war always seems to out-escalate the protests. We continue to do what we can, many of us, simply because, though we doubt that what we do does much good, we know that silence is worse.

Still, there are, from time to time, encouraging signs, such as the events surrounding Hubert Humphrey's visit here on February 20. For, despite his statement that "I find going out through the great universities that most of the people are with us," he seems to have fooled nobody. His presence at Stanford has created peace activity where there had been virtually none before – and it has rekindled the energies of those who had been active in previous years.

Since the start of classes in September, the campus has been uniformly quiet with respect to the war, and most people would have agreed, before the Vice President's visit, that if he were "safe" on any campus in America, it would have been Stanford's. When the Navy Air Force Recruiting Team (the same one which started all the fuss at Berkeley, 50 miles away) was here, a student peace committee distributed leaflets from a table next to theirs. There were no incidents, and, according to an organizer of the protest, "little interest or concern" shown by students passing by. When the Dow Chemical Company (manufacturers of napalm) recruited on the campus a week before Humphrey's visit and were picketed by three students, there were, again, no incidents or disturbances, as there have been elsewhere (*e.g.*, Wisconsin). In the first few months of the fall quarter I attended meetings of the Stanford Faculty and Staff Against the War in Vietnam Committee. The meetings concerned themselves, generally, with the problem of getting a speaker. The hope, as it often is at Stanford, was to enlist the support of more "moderate" faculty members.

At Berkeley, Stanford is known as a "rich man's school." If we are to understand the import of what happened when the Vice President came, the extent to which this is true must be

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emphasized. Let me, briefly, give one illustration of the attitudes and backgrounds of the majority of the students. In my freshman English class, after we had read and discussed autobiographical essays on childhood by James Baldwin, Alfred Kazin, Irving Howe, W. B. Yeats, and others, something, I knew, was still bothering my students. I pressed them, and finally one girl blurted out the answer: "Childhood," she exclaimed, "wasn't like *that!*" Weren't these writers "exaggerating?" The other students began to nod in agreement. It was not that they did not believe what Baldwin and the others had told them; nor were they angered. It was that they had nothing within their own experience which enabled them to respond to what they were reading. Many were still sure, when the period ended, that the authors had "exaggerated."

And, when plans had been made to protest Humphrey's visit, and I asked some of my students, outside of class, how they felt about it, they said they were going to try to get in to hear Humphrey so they could "see what he had to say about Vietnam." They didn't, it seemed, know that much about it.

The roses in our backyard were blossoming in January; magnolia and plum trees are in bloom now. Everything seems clean, untroubled, healthy. As one of my friends put it, after watching some TV shots of war action, it is difficult, living in Palo Alto, where it is eternal spring, to believe that Americans are "actually *doing*" those things we witness daily.

Less than a week before Humphrey came, though, some things began to happen. An ad hoc student group called an open meeting and then voted to protest Humphrey's visit with a walkout. They organized an all-night teach-in, a rally to be held after Humphrey's speech, and they began leafleting the campus. They prepared documents analyzing Humphrey's career, they gave out facts on the war, and they stated that they were "over the hump with Humphrey." They believed, their flyers said, that Humphrey came "not for an honest exchange of views between this academic community and the Administration he represents, but rather to continue the barrage of lies and propaganda that are an integral part of this government's war in Vietnam." They urged students and faculty to join in the walkout, stating: "We cannot bear to listen to Administration rhetoric any longer." Still, their protest was to be orderly. They urged those who joined them not to "heckle or disrupt Humphrey," or to react to those who did. "This would only disturb the quality of our own demonstration and lend added support to Humphrey."

A faculty group, feeling a walkout was inappropriate, organized its own "silent" protest. The organizing group secured the signatures of 211 faculty members for an ad in *The Stanford Daily*. They urged those who wanted to "give witness" to the protest, to wear white armbands, and to "remain silent throughout the meeting, without heckling or applauding." The statement, designed to woo moderate faculty members who had not previously opposed the war in any public way, read as follows:

> "We, the undersigned members of the faculty, welcome Vice President Humphrey to Stanford, but in so doing we cannot allow our welcome to imply approval of the Administration's resumption of the bombing of North Vietnam, extending a policy which Mr. Humphrey has unequivocally endorsed."

The hope was to have Humphrey meet a "dead" audience. The student group, however, had already organized the walkout, and a rally after the walkout.

Some faculty members, myself included, decided at noon on the Friday before Humphrey's visit, to endorse the walkout. Not only did we feel that a stronger statement was in order, but we hoped to bridge the gap between faculty and students so that it would not seem, once again, that the faculty were "responsible and moderate," and the students "irresponsible and wild." A statement was drafted which said that we could not "in good conscience, be silent during Vice President Humphrey's visit to Stanford." We endorsed the other forms of protest, but urged those who felt as we did to join in walking out.

By Friday afternoon we had over two dozen signatures for the ad, and many faculty members indicated that, although they would not pledge themselves to a walkout before they heard the Vice President, they expected that they would be walking out. Since we were able to contact no more than 50 faculty members in the limited time, we – and the student group – were encouraged.

I arrived at Memorial Auditorium on Monday at ten o'clock. (I had just finished teaching a class on *Hamlet*, and on that morning, though with no premeditation, we had discussed the question of his diseased will, and his inability to act on the evil he perceives.) Humphrey was scheduled to speak at 11:30 and there was little as yet to indicate what was to come. Many students and faculty wore white armbands, there were a few placards and banners (some made by members of "Concerned Citizens of Palo Alto"), but the temperature was in the low 70's, the sky was a clear blue, and when, over the sound truck a student

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By JEROME AGEL

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said, "Come to the rally after the speech," it sounded almost as if he were saying, "Come to the party after the game."

Uniformed NROTC students and white-armbanded students and no-armbanded students waited together without any heated discussions. On the following day the *San Francisco Chronicle* characterized "most of the protest" (excluding the finale) as "quiet, orderly, even lethargic." By 11:20 or so it was clear that most of the large crowd was not going to get in. Only 87 special passes had been issued, according to the Associate Director of University Relations (including 7 to the group of original signers of the "moderate" faculty statement), yet it seemed inconceivable to many that 1,600 others (the remaining number of seats) had entered through the front door. Talk of "packing" the audience spread. Some people who had been on the top steps, only 10 feet from the doors, never got inside. Some, who were on the top steps, contended, in letters to *The Stanford Daily*, that no more than 400 could possibly have entered. And the 7 faculty members who stood inside the front doors handing out instruction sheets on the silent protest to all who passed them (ID's were checked at the door), discovered afterwards that they had distributed less than 800 sheets. Still, no evidence exists to prove that 1,600 people did not pass through the front door.

I myself did not get in. However, there were loudspeakers set up outside the auditorium. Humphrey chose as the subject for his opening remarks to the students and faculty of the university called "the Harvard of the West," *Time* magazine's "now generation." He said he came to Stanford "to be where the action is," and he called Pope John one of the "now people." He did not mention Vietnam. After these opening remarks, about 50-100 people left the auditorium. Later, when Humphrey stated that "if President John F. Kennedy were alive today he would be doing exactly what the Johnson Administration is doing at this very hour," another 200 left. At this point, according to *Stanford Daily* editor Henry Muller, who was one of the panelists questioning Humphrey, the Vice President became visibly flustered. "This is the real smart crowd," he said. "They have all the information they need."

Those who had walked out and many who had been unable to get in began to gather at the rear exit to the auditorium. The mood of the crowd had shifted. The failure to get in, Humphrey's remarks, and the applause that greeted them, added to the growing sense of frustration.

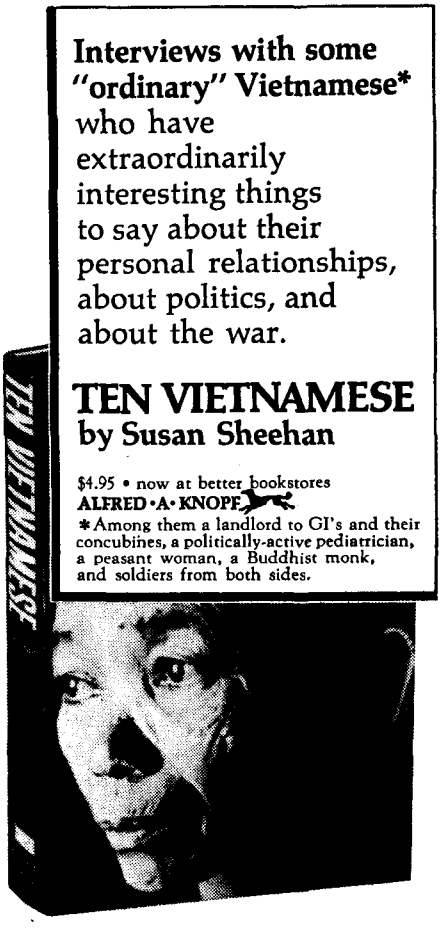
"Humphrey," *The San Francisco Chronicle* reported on its front page the next day, "answering questions put to him by a panel sponsored by the Student Political Union, defined the United States role as that of global policeman against communism." An indication of his manner of answering was evident when the first question was put to him, one which concerned the coincidence of "peace feelers" with US escalations. Dates were cited. The Vice President responded by going on at length about a visit he had had with Premier Kosygin one year ago. And he said that during Kosygin's recent stay in England, the Premier had said "nothing" that indicated North Vietnam was ready for peace talks.

By the time Humphrey had finished, the crowd was indignant. According to *The Stanford Daily* more than 2,000 students and faculty were gathered at the rear exit. Ropes were drawn across the walks leading from the doors, and a policeman said that the Vice President would "definitely" be leaving that way. A short while later Humphrey appeared at a window and he was immediately greeted with a chant of "Shame! Shame! Shame!" A minute or two later he appeared at another window and the cry went up again.

Next, a cordon of 10 to 12 Secret Service men and armed police appeared at the rear exit, as if to escort the Vice President to his car. At that instant, though, Humphrey was leaving by a side exit, surrounded by Secret Service men and police. A group of about two dozen students, waiting at that exit, began to cry "Shame!" repeatedly and those of us who had just been decoyed began running from behind the auditorium, across the grass, toward Humphrey's car – chanting "Shame! Shame!" in unison. This is what was reported over national TV, radio and in the press as an "attack." To be fair, some of the students who were at Humphrey's exit did try to get in his way. However, according to *The Stanford Daily*, "the crowd did not seem to delay Humphrey's progress." *The San Francisco Examiner* reported that it took him less than three minutes to walk the 100 yards to his car, get in, and drive away.

Wallace Sterling, President of Stanford University, immediately issued an apology, blaming the disturbance on "a group of students and non-students," and stating that "*Stanford* regrets this incident and offers its apology to the Vice President. . . ." (italics added).

The response from students and faculty, however, was unexpected. *The Stanford Daily* ran an editorial entitled "Insult Added to Injury," which began: "Hubert Humphrey's appearance at Stanford was an insult to the academic community, not so much because of what he said, but because of the way he said it. He apparently does not understand the difference between a University and a Democratic wom-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en's tea. . . . President Sterling has apologized in the name of Stanford for Monday's incident, implying, with excuses reminiscent of Berkeley, that non-students were in part responsible for the disturbance as the Vice President tried to leave. This interpretation of the facts is disquieting. President Sterling may have been disturbed, but many Stanford students were not; they were indignant, and should have been."

The letters column has since been full of criticisms of Humphrey, including some by students who claimed to have been undecided before, but were so repulsed by Humphrey's performance, that they were now "opposed." I received calls from faculty members who, before the visit, had been unwilling to endorse the walkout, but who felt after that the only proper protest would have been for 1,700 of us to have stood in the auditorium and chanted "Shame!" for the full hour. Faculty members involved in the silent protest were disappointed with its "ineffectiveness," but encouraged by the student reaction to the entire episode. According to one of them, they were immediately besieged by requests from dormitories and fraternities for faculty members to speak on the war. Dean of the Chapel B. Davie Napier expressed their feelings when he said, "I had the impression that [the Vice President] was most immoral when he was talking loudest about morality."

The protests are continuing. A student-faculty group has initiated an open letter to Humphrey, and is busy soliciting signatures. The letter states, in part, that Humphrey's answers "would be completely unacceptable in an academic community no matter what the subject; when the terrible suffering of all the people in Vietnam is involved, we must all respond with dismay, and many of us with outrage."

A student group has called on students and faculty to wear white armbands every Wednesday. A series of twice-weekly lectures on Vietnam by faculty members is in progress. According to faculty members who have been here for many years, nothing quite like this has happened on the campus before.

All of this should seem heartening – as it did at first. But then one must remind oneself that although, in individual enclaves, the peace movement may grow, in Vietnam the war grows faster. Within a week of Humphrey's visit, for the first time, we mined North Vietnamese rivers, we shelled North Vietnam from the Bay of Tonkin and from directly below the demilitarized zone, and we used paratroopers as 50,000 US troops invaded the alleged NLF stronghold in Zone C. As Humphrey had put it at Stanford, Hanoi will know "by the summer" that "the ball game is over."

Jay Neugeborn

Jay Neugeborn is a visiting lecturer in English at Stanford. His first novel, Big Man, *was published last year.*

Correspondence

The Button on the Head

Sirs:

Your February 11 note, "Why Stay in Vietnam?" hit the button on the head. You forgot to mention a few things, however:

1. The National Liberation Front was until about 1964 largely an indigenous *non-communist* group promoting revolution via primarily *social* means. Military and so-called "terrorist" action was relatively tertiary in their struggle against a corrupt Saigon government.

2. The NLF relationship to Russia has always been quite bland. The relationship to China somewhat closer, but not much so (the Chinese were somewhat dismayed with NLF "terrorist" activity). NLF had always strived to maintain its independence from North Vietnam, and was definitely not interested in unification.

3. Contrary to popular belief, it was not North Vietnam which prevented "free" elections in South Vietnam – but the Saigon government – after the Geneva Accord. And why not? The South Vietnamese government had not been a party to the accord! The NLF started revolutionizing again only after they found out that they had been sold out and that Saigon had no intention whatever of including them on a "free" ballot.

4. 60 percent of South Vietnam is today governed by NLF – ask anybody.

5. It was our own fault that NLF has come under increasing infiltration and dominance by North Vietnamese communists. Where else could they turn? Even today we've made it clear that they will not be welcome in "free" elections.

Neil Elliott
Da Nang, South Vietnam

On Probation

Sirs:

Reference is made to your comment in the February 18, 1967 issue on the President's crime message:

"The proposal to make a system out of the splintered federal probation, prisons and parole functions probably was not sweetened enough to appease the federal judiciary, which clings to its probation officers as a form of judicial patronage. The Justice Department contends, sensibly, that it would be better management

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to run all these services in a single system."

The federal judiciary did not oppose the unified correctional system. They did oppose placing such a system within the Department of Justice which also directs prosecution and would be responsible for the recommendations which are made by such a service. This position was also taken by the American Bar Association at its 1966 convention. The federal judiciary recommended that no change be made until a study in depth was effected.

The proposal to place a unified correctional system within the Department of Justice has neither precedent nor justification. None of the states that possess a so-called unified correctional system gives the local or state prosecutive agency any administrative authority over the probation or parole service. The Standard Probation and Parole Act of the National Council on Crime and Delinquency, the Manual of Correctional Standards of the American Correctional Association, and the Model Penal Code of the American Law Institute, all of which contain recommendations for state departments of correction, do not give the prosecutor a hand in the administration of correctional services.

With reference to patronage, this is a slur on the federal probation officers. The qualifications for appointment as a federal probation officer have been established by the Judicial Conference of the United States and have been made mandatory. As a result, the Federal Probation Service today, with reference to qualifications, matches the highest of any probation and parole service in this country and greatly exceeds the standards of most states.

Albert Wahl, President
Federal Probation
Officers Association

The Mexican War Dove

Sirs:

In connection with Herbert Mitgang's article *The Mexican War Dove* (February 11), a letter written by Abraham Lincoln on the unconstitutional aspect of the war may be of interest.

Mr. Mitgang writes that when Lincoln was in Congress he angered his constituents by his opposition to the Mexican War which he called a war of aggression. (On one occasion he remarked that those who argued it was not an aggressive war reminded him of the farmer who said, "I ain't greedy about land. All I want is what joins mine.") Since President Polk had not submitted the question of declaring war to Congress, Lincoln also opposed the conflict on constitutional grounds.

One of the many persons who disagreed with his stand was his law partner, William Herndon. Writing to Lincoln, Herndon said that it had been necessary for the President to invade Mexico in order to *repel* an invasion.

To this Lincoln wrote the following eloquent reply:

"Allow the President to invade a neighboring nation, whenever *he* shall deem it necessary to repel an invasion, and you allow him to do so, *whenever he may choose to say* he deems it necessary for such purpose – and you allow him to make war at pleasure. Study to see if you can fix *any limit* to his power in this respect, after you have given him so much as you propose. If, today, he should choose to say he thinks it necessary to invade Canada, to prevent the British from invading us, how could you stop him? You may say to him, 'I see no probability of the British invading us' but he will say to you 'be silent; I see it, if you don't.'

"The provision of the Constitution giving the war-making power to Congress, was dictated, as I understand it, by the following reasons. Kings had always been involving and impoverishing their people in wars, pretending generally, if not always, that the good of the people was the object. This, our Convention understood to be the most oppressive of all Kingly oppressions; and they resolved to so frame the Constitution that *no one man* should hold the power of bringing this oppression upon us. But your view destroys the whole matter, and places our President where kings have always stood."

Barbara Cary
Wilton, Conn.

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Harrison, *from page 24*

can do for me. And next month when [Gertrude and I] have moved and finally settled in I'll be using it all the time in my lovely new little kitchen."

The move to which she referred was to the rue Christine and the rest of that letter says something about who did what: "We are so busy running and so running about – and Gertrude blows a fuse at least once a day and I completely lose my temper and succeed in getting what we must have from recalcitrant gas companies or gentle but obstinate carpenters. . . . And now I must fly to it, to say they must not do whatever it is they may be doing." She did more for Miss Stein than type manuscripts, answer mail, cook, polish the furniture, needlepoint small chair coverings for which Picasso made the designs, market, bar the door to intruders – but she did all these things too.

Her judgments of people were shrewd, never mean, rarely mild. She was not easily deceived, unless she wished to be, which she did if the errant or unfaithful friend had been *their* friend in glorious days past. The wily lady art dealer who wanted to exhibit the Stein paintings in New York in the fifties and offered to bring Alice Toklas along with them, as part of the show, got nowhere. Of another enterprising lady, Alice wrote: "What an inexhaustible, restless, disturbing outpouring of unemployable energy. Someone has just told me of a friend's having invented a lovely new word, 'underwhelmed.' Poor —— is indeed underwhelming." Her standards of housekeeping never permitted unreserved approval of servants. They came and went, as did her comments: "If no word has come to you from me before," she wrote a friend in America, "It is because the very naughty *femme de menage* has not turned up since [a week ago]. She has said it is because a dear cousin died, because her daughter returned from the country and had been unprepared to enter a technical school – she will give me a further choice when she finally comes back in three days." Elsewhere, she noted that Poppy Cannon had written an introduction to the recipes in the *Alice B. Toklas Cookbook*, and "Americanized them, so that they may be intelligible to the US, if not to me."

She never lost her passion for America or her strong American accent. She told of going to the American embassy in Paris in 1960, before a visit to Italy. She had forgotten to bring her old passport, "so I had to go over again with it and they said to bring photographs. Then they gave me a fistful of papers to fill out which took all my spare time for three days ('where are your divorced husbands and nieces and their children by previous marriages'), then I got there with the papers filled and the photographs and the old passport and I fell asleep in a chair and a nice young woman led me to her desk and in a very little while a man came and asked me to swear allegiance and fidelity (which I haven't had to do since 1914)." Italy was an escape from the Paris winter, which she hated. The apartments got colder as she aged. She didn't have colds, though, because "the microbes aren't heated enough to breed."

Her letters were full of teasing fun. To someone who apologized for typewriting a letter, Alice replied: "Can it be said with all possible appreciation of the distinction of your handwriting that it is illegible more frequently than not. Does no one say this cruel thing to you. And do you forgive me for doing so. The old Baronne Pierlot covered pages and pages, she was a great letter writer, with a marvelous caligraphy that absolutely no one could decipher. Gertrude once said to her, its beauty and its illegibility are quite independent, one upon the other, which made our old friend cackle but it was too late to be effective."

Occasionally, in the fifties, friends drove her out to the countryside, or to the south of France. She describes a

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trip to Antibes, "in full sun, windows open to the sea day and night, full moon and sunlight, no mistral, the Picassos of a splendor, Corbusier's chapel like a bathhouse deluxe – helping the effect, almonds, peaches and mimosa blossoms, a lovely long day with Picasso, a day to Provence to revisit old cities and alas to revive old memories. There are moments each day of a light that only the pure in heart deserve, primitive Greek. It is the most overwhelming rare and precious vision we are likely to have in the unholy days we are in." On one of those trips she discovered a cure for insomnia: "One clove garlic cooked for ten minutes in one portion vegetable, any kind, but the garlic should not cook long. In three hours you are asleep."

Iceland was suddenly a possibility. There had been a suggestion, in 1955, that she come and talk. "I'd go like a shot if they will pay my air passage." But why should they, she wondered, "Should I give a *causerie* in drawing rooms on Picasso or onion soup or both? Oh my dear what a lark – off to Iceland! which will be Gulf-stream comfortable all new new new. To slip out some spring morning in a place one doesn't know has always been my idea of pleasurable excitement."

There was a jaunt to La Begie, where there was a "François premier pavilion, an 11th century chapel, large flowers, vegetable gardens, fruit trees and a vast plantation of tobacco, all this surrounded by walls." Nice she found less pleasant: "We are on a hill but without a view, in an inconceivably commonplace landscape. We are surrounded by small villas of retired functionaries, for the first time in my life I am in the midst of *petit bourgeoisie* and not liking it, depressing if I thought of it which I don't. The rue Christine is working class, which I prefer." Still, the cooking was good. "Herbs and spices," she told Carl Van Vechten, had always been her "Stars and Stripes."

I see her listening, amused, hunched in her chair, the cap of still-dark hair, the sandals and the wool skirt and jacket and the large glittering brooch and matching ring. I see the breakfast tray in the garden of Bilignin in the happy summer of 1937, with Alice's wild strawberry jam and the warm biscuits, and I recall the walk that day, past a pond where a white lily floated, and Gertrude Stein saying, "Oh reach for it and bring it to Alice and she will love you the rest of your life." An irresistible request.

Alice Toklas could not cut off the past any more than she could a present which reached into the everlasting. She would be with Gertrude Stein again. It had always been the love "whose service is perfect freedom." In 1957, Alice Toklas was converted to Roman Catholicism. She kept that comfort to herself, but she looked forward to "the peopled Heaven – not only God and Jesus, but the angels and the saints."

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Its author is Clement G. Martin, M.D., F.A.G.S., F.A.C.N. As you may know, Dr. Martin is former medical director of two of the largest insurance companies in the United States, where he specialized in geriatric research — the science of prolonging youth, strength, health and life—far beyond their present limits.

Over eight years ago, in conjunction with his state medical society, Dr. Martin published a pamphlet based on this research. The response was so overwhelming that he then expanded this information into a book — called *How to Live to be 100* — which immediately soared to the top of the best-seller lists, and sold over 100,000 hard-cover copies in the first two years alone.

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On page 144, you're shown how the *way* you eat may contribute as much or more to your overweight problem as the actual *foods* you eat. And then on page 150, you're given the medically-proven, *fastest-possible way* to lose excess pounds. Again, this is *not* a diet at all. And the greater your excess weight, the *faster* this method works.

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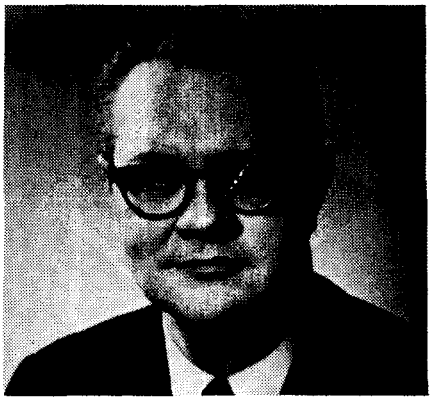

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